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सं० 2] नई दिल्ली, फरवरी 4—फरवरी 10, 2007, शनिवार/माघ 15—माघ 21, 1928
No. 2] NEW DELHI, FEBRUARY 4—FEBRUARY 10, 2007, SATURDAY/MAGHA 15—MAGHA 21, 1928

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप खण्ड U (iii)
PART II—Section 3—Sub-section (iii)

केन्द्रीय अधिकारियों (संघ राज्य क्षेत्र प्रशासनों को छोड़कर) द्वारा जारी किये आदेश और अधिसूचनाएं
Orders and Notifications issued by Central Authorities (other than the Administrations of Union Territories)

भारत निर्वाचन आयोग

नई दिल्ली, 2 जनवरी, 2007

आ. अ. 5.—लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में भारत निर्वाचन आयोग इसके द्वारा 2004 की निर्वाचन याचिका सं. 1 में केरल उच्च न्यायालय के 31 अक्टूबर, 2006 का निर्णय/आदेश यहां प्रकाशित करता है।

(निर्णय/आदेश इस अधिसूचना के अंग्रेजी भाग में छपा है।)

[सं. 82/केरल-लौ. सं./ (1/2004)/2006]

आदेश से,
तपस कुमार, सचिव

ELECTION COMMISSION OF INDIA

New Delhi, the 2nd January, 2007

O.N. 5.—In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes the judgment/order of the High Court of Kerala, dated 31st October, 2006 in Election Petition No. 1 of 2004.

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IN THE HIGH COURT OF KERALA AT
ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE C. N.
RAMACHANDRAN NAIR

Tuesday, the 31st October, 2006/9th Karthika, 1928

El. Pet. No. 1 of 2004 (CR)

Petitioner

Adv. P. M. Ismail, S/o. Mohammed Aged 52
Panakkal House, Mudavoor P. O. Muvattupuzha
By Adv. Sri G. Janardhana Kurup

Sri P.V. Surendranath

Sri John K. George

Sri B. Vinod

Sri P.K. Varghese

Sri S. Sulochana

Sri K.A. Akbar

Sri K.S. Arunkumar

(9)

Respondents :

1. Adv. P.C. Thomas, Pullolil House, No. 18, Kumaranasan Nagar, Kadavanthara, Ernakulam
2. Jose K. Mani, Karingozhakkal, H. No. 18/31, Pala P.O.
3. P. Appukuttan, Ranjini, Kizhakkekkara, Muvattupuzha P.O.
4. Ismail, Thekkemangalam, Erattupetta P.O. Meenachil
5. A.M. Ismail, Safia Manzi, 38/539, Stadium Ward, Alappuzha
6. P.A. Ismail, Palasseri, Koolipparambil, 8/250, A.R. Nagar, Thiroorangadi, Kuttoor North Post.
7. Johnny Mani, Pulittel, Rakkad, Mekkadampu P.O. 682316
8. Jose Joseph, Anakkallumkal, Kurumannu PO Pala
9. P.C. Thomas, (Pazhiyankal), Pazhiyankal, H.No. 209, Chirakkidavu P.O. Kanjirappally
10. Adv. P. C. Thomas, (Peediakkal), Peediakkal House, Thiruvalla 689101
11. Mahin Badusha Moulavy, Kelamkudiyil, Senkulam P.O. Muthuvankudy, Idukki.
12. K.M. Mani, Kattackal Veedu, Vazhakkulam Muvattupuzha
13. K.T. Mathew, Kumaramtharayil, Pala P.O.
14. K.N. Rjasekharan Nair, 8/550, Sreerangam, Chottanikkara
15. P.P. Santhosh, Puthenpura Thundiyl, Maradu P.O. Ernakulam
- By Adv. Sri. Rojo J. Thuruthipara
Sri. Baby Thomas
- R1 By Adv. Sri K. Ramakumar
Sri Benny Antony Parel
Sri Rojo J. Thuruthipara
Sri Baby Thomas
Sri. T. Ramprasad Unni
- R2 By Sri. Sunil Cyriac
- R5 By Sri. A. J. Jose (Aedaiedi)
- R10 By Adv. Sri Bobby John
Sri P.N. Damodaran Namboodiri
Sri. T. A. Shaji

This Election petition having been finally heard on 27-9-2006. The Court on 31-10-2006 Delivered the following :

C. N. RAMACHANDRAN NAIR, J.

E. P. NO. 1 OF 2004

Dated this the 31st day of October, 2006

JUDGMENT

This Election Petition is filed by one of the defeated candidates challenging the election of the first respondent

to the House of People from 12 H.P. Muvattupuzha Parliamentary Constituency in the election held on 10.5.2004. The first respondent won the election with a margin of 529 votes over the petitioner who got second largest number of votes. While the petitioner was the candidate from CPI (M), a constituent of Left Democratic Front, the first respondent was the candidate from the Indian Federal Democratic Party, a constituent of the National Democratic Alliance, and the second respondent who also contested the election on party lines was from Kerala Congress (M), a constituent of the United Democratic Front. When the first respondent secured 2,56,411 votes, the election petitioner got 2,55,882 votes and the second respondent secured 2,09,880 votes. Respondents 3 to 15 contested the election as independents and all of them got insignificant number of votes compared to the total number of votes polled, that is, 7,45,885 out of which 7,45,871 were valid votes. Petitioner's case is that the first respondent won the election with a narrow margin of 529 votes over him by committing corrupt practices under Sections 123 (3) and 123(5) of the Representation of the People Act, 1951, hereinafter called the 'Act' detailed in the election petition and therefore, his election is liable to be declared void under Section 100(1)(b) of the said Act. Consequent relief prayed is for declaring the petitioner elected as provided under section 101 (b) of the Act.

2. Even though notices were issued to all the respondents only the elected candidate, namely, the first respondent filed written statement and contested the Election petition. However, respondents 2,4, 5 and 10 entered appearance through counsel and supported the Election Petition during hearing but opposed the petitioner's prayer for declaring him elected. The maintainability of the Election Petition was questioned by the first respondent and this Court vide detailed order dated 28-2-2005 sustained the maintainability of the Election Petition on two grounds of corrupt practices, one falling under Section 123(3) of the Act and the other falling under Section 123(5) of the Act. While the petitioner himself gave up grounds pertaining to allegation of excess election expenditure incurred by first respondent over the maximum limit provided under Section 77 of the Act and the allegation of corrupt practice of undue influence under Section 123(2) of the Act arising out of the speech made by the then BJP President, Sri Venkaiah Naidu, this court rejected the ground of bribery alleged in the form of gratification offered by the first respondent to the 10th respondent to withdraw the latter's candidature from election. The adjournments taken by both sides particularly the first respondent on account of SLP filed in the Supreme Court against the order rejecting preliminary objections on maintainability of Election Petition caused some delay in commencement of trial of the Election Petition. However, after calling for draft issues from

petitioner and first respondent, this Court framed the following issues for trial :—

1. Whether the 1st respondent has committed corrupt practice as contemplated under Section 123(3) of the Representation of the People Act, 1951 by printing and publishing Annexure I notice and Annexure II photo calendar and distributing and circulating Annexure I along with Annexure II by himself, his election agent, and other agents, his election workers and campaigners with the consent and connivance of the 1st respondent in various places of No. 12 H.P. Muvattupuzha Parliamentary Constituency for the election held on 10-5-2004.
2. Whether the 1st respondent, his election agent and other agents with the consent of the 1st respondent had committed corrupt practice contemplated under Section 123(5) of the Representation of the People Act, 1951 by hiring and procuring vehicles, viz., autorickshaw Nos. KL5/4400, KL-5/C 3431 and Jeep Nos. KRO 6606 and KL-5/1845 for free conveyance of the electors to and from the polling station Nos. 57 to 71 in Poonjar Thekkekara Panchayat in Poonjar Assembly Constituency of No. 12 Muvattupuzha Parliamentary Constituency for the election held on 10-5-2004.
3. Whether the election of the 1st respondent from No.12 H. P. Muvattupuzha Parliamentary Constituency be declared as void by the conduct of corrupt practices enumerated in issue Nos. 1 and 2 and is liable to be set aside.
4. Whether the petitioner has to be declared as duly elected from No.12 H. P. Muvattupuzha Parliamentary Constituency after setting aside the election of the 1st respondent.
5. Whether the petitioner is entitled to get the cost of his election petition.

3. On behalf of the petitioner, twenty five witnesses including the petitioner were examined. Annexure I notice dated 21-4-2004 with its English translation as Annexure I(a) and photo calendar Annexure II produced along with the Election Petition were marked through petitioner as Exts. P 1 and P2 respectively. On the side of the first respondent, eleven witnesses including himself were examined and Exts. R1(a) to R1(g) were marked. After closure of evidence and during hearing, this Court felt that controversy on claim by witnesses about filing documents marked in evidence in the office of the Returning Officer, participation in the proceeding before him and compliance of legal formalities in the office of the Returning Officer, on which oral evidence produced is conflicting would be better resolved by reference to official Election records. However, instead of ordering production

of entire election records to Court, this Court vide order dated 9-6-2006 issued appropriate directions to the Returning Officer to give opportunities to both the parties to verify election records, and issue them copies of documents or certificates on facts borne out by records as demanded by them for production in this Court. The petitioner accordingly obtained and produced Annexures III to VII from the Returning Officer along with Petition, I.A.No. 4 of 2006 filed under Order XI, Rule 14 read with Section 151 of the CPC to receive the documents. The first respondent objected to receipt of documents after closure of evidence, and therefore this Court vide order dated 28-6-2006 granted opportunity to the first respondent to file counter affidavit in support of his objections against receipt of documents and the same was filed on 9-7-2006. Since the documents were filed in the course of final hearing of the Election Petition, this Court felt there was no need to pass separate order on the Interim Application to receive documents, and therefore the first respondent's objections are considered while considering Annexures III to VII in this judgment.

4. The first issue raised for consideration is whether the first respondent has committed the corrupt practice under Section 123(3) of the Act by printing, and circulating among electors Annexure I notice [English translation Annexure I(a)] and Annexure II picture calendar produced along with Election Petition and marked in the course of evidence as Exts.P1 and P2 respectively. For easy reference, the "corrupt practice" defined in Section 123(3) of the Act is extracted hereunder :

123. Corrupt practices. — The following shall be corrupt practices for the purposes of this Act :—

(3) The appeal by a candidate or his agent or by any other person with the consent of a candidate or his election agent to vote or refrain from voting for any person on the ground of his religion, race, caste, community or language or the use of, or appeal to religious symbols or the use of, or appeal to, national symbols, such as the national flag or the national emblem, for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate:

Provided that no symbol allotted under this Act to a candidate shall be deemed to be a religious symbol or a national symbol for the purposes of this clause

In order to decide whether corrupt practice is committed as alleged in this case, the Court has to examine (1) whether Ext.P1 notice and P2 picture calendar independently or jointly constitute an appeal to the voters to vote on the ground of religion or community or caste of the first respondent, as alleged in the Election Petition, and (2) if the answer to the above question is in the affirmative, then whether the first respondent or his agent,

or any other person with the consent of the first respondent or his election agent has printed, and distributed or at least distributed the same among electors to bring the same within the mischief of the above Section. Unless both the aspects are proved affirmatively beyond all probable doubts, the corrupt practice under Section 123(3) of the Act cannot be said to be established. Therefore if the first aspect of the question is found in the negative, then there is no need to go into the second part of it. In fact, in the written statement, the first respondent after denial of allegation of printing and circulation of Exts. P1 and P2, in the alternative has claimed that those do not amount to appeal to vote on ground of religion, caste or community of the first respondent to attract the mischief of Section 123(3) of the Act. However, the case of the petitioner is that the independent and combined effect of Exts. P1 and P2 is a direct and unambiguous request to members of the Christian community, particularly Catholics, to vote for the first respondent purely on the ground of his religion and community and the first respondent through his election agent got Ext. P1 and P2 printed and supplied the same to his party offices at various places in the constituency from where the party workers of the first respondent with his knowledge and consent distributed the same among electors in the constituency which squarely attract Section 123(3) of the Act. Therefore I proceed to consider systematically in stages whether the above allegations stand proved.

5. I have meticulously gone through Ext.P1 which is dated 21.4.2004 and published in the name of John Kachiramattam, who even according to the first respondent and his election agent, is a long standing leader and office bearer of the Catholic Congress. I find that first respondent is described therein as Former State Secretary of "Catholic Congress" and was also the President of the Catholic Congress of Kothamangalam Diocese. His father, who was the Home Minister of Kerala, was also stated to be a prominent leader of the Community. It is stated in paragraph 2 of Ext.P1 that Holy Father, obviously meaning Pope, has exhorted that the Christian community which is about 2 per cent of the population of the country should not keep away from the National main stream. Further, in paragraph 3, it is stated that first respondent is the first person to reach Jambuvu in Madhya Pradesh to help the missionaries who were abused. Acknowledgment of this through public declaration by Bishop Mar Mathew Vaniyakizhakkal is also referred to therein. It is stated in paragraph 3 of Ext. P1 that many representatives of Christian community serving in North India have, over phone and letters, praised the help and services they have received from the first respondent. After narrating about the services of the first respondent and after describing the first respondent as a well wisher of Malayalees in Delhi, it is stated in Ext. P1 that first respondent has fought in Parliament for the benefit of agriculture sector, to which

great majority of members of "our community" belong. Fourth paragraph of Ext.P1 refers to the first respondent's participation in the beatification ceremony of Mother Teresa at Rome where he kissed the hands of Holy Father, obviously Pope. After stating that "our community" can be proud of first respondent, it is stated in Ext.P1 that he was sent to BJP Front only because of selfish and personal interest of certain people. The first respondent is thereafter compared to the Biblical character Joseph who was elevated as Ruler by the Aliens in the presence of Jesus Christ. In the last paragraph of Ext. P1, the publisher, namely, John Kachiramattam makes a specific request to vote for the first respondent, who is described as the representative of the Christians following the footsteps of Lord Jesus and who follows the commandments of Holy Church. The publisher finally requested the public to extend strong prayers and support to enable the first respondent to continue as Jesus witness in Delhi.

6. The question to be considered is whether Ext.P1, gist of which is stated above, amounts to an appeal to the electors to vote for the first respondent on the ground of his religion, caste or community. The case of the first respondent is that his religion or community is not mentioned in Ext.P1 and therefore the crucial question to be considered is whether the religion or community of the first respondent itself is disclosed in Ext. P1 and if so whether there is a request in Ext.P1 to the electors to vote for the first respondent on the ground of his religion or community. The religion of the electors before whom appeal is made to vote is not relevant or material for the purpose of the Section. In order to attract Section 123 (3), what is required to be proved, as contended by counsel for the first respondent based on the decision of the Hon'ble Supreme Court in *HARBINDER SINGH PRADHAN V. RANJITH SINGH THALWANDI*, (2005) 5 SCC 46, is appeal to vote on the ground of religion, caste or community of the candidate. According to the first respondent's counsel there is no mention about the community or religion of the first respondent in Ext.P1 much less any request or appeal to vote on the basis of his community or religion. The Supreme Court in *Ram Sharan Yadav V. Thakur Munreshwar Nath Singh* reported in A.I.R. 1985 SC24 held that the Court has to examine the effect of statements made by the candidate in the minds and feelings of the ordinary average voters of the country. Therefore what is relevant is not what the Court can understand or make out by reading Ext. P1, but what is to be considered is the effect and idea that will be conveyed to ordinary electors when they read Ext. P1. Unless the language used is plain and unambiguous and main idea conveyed to the electors is a request or appeal to vote on the ground of religion, caste or community of the candidate, Ext.P1 cannot be said to be an offensive document hit by Section 123(3) of the Act. This is a matter to be proved by evidence and therefore this Court has to refer to the evidence of

independent witnesses examined on behalf of the petitioner. PW2, who is a catholic when asked about the discussion he had with family members on Exts. P1 and P2, answered that after discussions with family members, they being catholics, decided to vote for the first respondent, who is a catholic. This witness further stated that there was general talk among people that if first respondent is elected, he may become a Central Minister which will be beneficial to the catholic community. In cross-examination, the witness reconfirms that until receipt of Exts. P1 and P2 they had not even decided to vote. PW6 who is also a catholic states in evidence as follows : I understood from the copies of Exts. P1 and P2 that PC Thomas (first respondent) stands for the catholics. I guessed the purpose is to get votes from the believers. In Ext.P1 there is a statement that first respondent stands for the catholics and the request in Ext. P1 notice to the believers is to vote for PC Thomas". The witness further states that the person in whose name Ext.P1 was published, namely, Sri. John Kachiramattom. Stated in an. Election meeting attended by the witness that wherever Christians were attacked, Sri P.C. Thomas (first respondent) came to their aid and therefore believers should vote for him. In cross-examination, the witness reconfirms that he has understood from the statement in Ext. P1 that first respondent is a catholic. PW7 another witness from the catholic community has stated that on reading Ext.P1 notice, he understood that lot of things are done for the catholic community by PC Thomas (first respondent). On a specific question as to what he felt after reading Ext.P1, the witness answered as follows: "If Catholic community has to get any benefit, we have to vote for PC Thomas, is what I understood", In cross-examination, the witness further adds that his children after reading Ext.P1 told him that PC Thomas (first respondent) works for the catholics and first respondent represents catholic community and for catholics he should win. PW9, a Christian by religion, has stated that what is written in Ext. P1 is that if PC Thomas (first Respondent) becomes a Minister, it will be beneficial to catholics. PW10, who is also a member of the catholic community, has stated that he understood from Exts.P1 and P2 that first respondent is a person who stands for the catholic community and after discussion with family members also he formed the opinion that first respondent stands for the catholics and goes for their help as and when required, The witness further concluded that he went to friends with copies of Exts. P1 and P2 and requested them to vote for the first respondent. As the latter stands for the catholic community. On being asked in cross-examination that it is not specified in Ext. P1 that first respondent is a catholic. The witness explains that first respondent was stated to be the President of the Catholic Congress of Kothamangalam Diocese and therefore he has to be necessarily a catholic because only a catholic can become the President of the Catholic Congress. The witness reconfirms this information only from Ext. P1 PW11

another catholic witness has also stated that what is projected in Exts. P1 and P2 is that first respondent is mainly a person for catholic community. Prior to this. The witness stated that first respondent is the Leader of Catholic community and was the President of the Catholic Congress of Kothamangalam Diocese. All these answers were given against questions on Exts. P1 and P2. PW20 who is a lady from the catholic community gave evidence as follows: "After reading Ext. P1. I felt that Mr. P.C. Thomas is a person who helps us. Even though there is no request in Ext.P1 to vote. The idea I got is that if you vote for the first respondent. Members of the community will be benefitted" The witness further adds that she discussed with her husband. Members of the community in Church and friends coming to her shop and all of them decided to vote for the first respondent because he will be. Helpful to the Church and the school under church management. The witness further adds that it is also a well-known fact that first respondent is a catholic. PW23 who is also a member of the catholic community has stated that on reading Ext. P1 he understood that first respondent was the previous President of the Catholic Congress and the present President is requesting vote for the success of the first respondent. The witness further adds that it is stated in Ext. P1 that first respondent is a person who has taken lot of pains for the catholic community and he works for the community. On being specifically asked in cross-examination as to whether the witness and his family members would vote based on Ext. P1, the witness answers that "we vote for the person who stands for the community". From the above evidence of the witnesses whose testimony is not discredited in any way in cross-examination, it is clear that they understood from Ext. P1 that first respondent is a catholic, leader of the said community and a person who always works for the said community and offers help wherever the community's interests are in trouble and the witnesses also unequivocally state that they understood Ext. P1 as the request to believers to vote on the ground of community and religion of the first respondent on account of his past and expected services to the catholic community. It is to be noted that witnesses are ordinary people like agricultural workers, persons engaged in tailoring, etc. Besides the understanding of the ordinary electors who are examined as witnesses that Ext. P1 is an appeal to vote on the ground of religion and community of the first respondent, on going through Ext. P1 I find that all pervading references therein are the past services of the first respondent for the catholic community and what the community can expect from him in the future. By stating that first respondent was the ex-President of the Catholic Congress and his father, ex-Home Minister of Kerala, was the leader of the community, and all pervasive references of the catholic community and first respondent's services to it in Ext. P1, it is made clear beyond any doubt for any ordinary elector that first respondent is a catholic and the

idea conveyed is that those who care for the said community's interest should vote for him. The first respondent and his election agent in their evidence have stated that Mr. John Kachiramattom in whose name Ext. P1 was published was the State President of the Catholic Congress. The Catholic Congress is understood by every one as an organisation of members of the catholic community formed on the diocese level and at the State level. Even the first respondent has not denied it's true nature as a religious organisation. No doubt counsel for the first respondent rightly pointed out that first respondent's services to the society as a whole as Member of Parliament are also stated in Ext. P1. Therefore what is to be further considered is whether Ext. P1 generally talks about first respondent's services to the society as a whole and reference of his service to his community is only incidental, in which case, the object and purpose of Ext. P1 cannot be said to be an appeal to vote on the ground of religion of the candidate. However, none of the witnesses whose evidence is discussed above has understood Ext. P1 as describing the services of the first respondent to the society as a whole. On the other hand, all the witnesses have unanimously stated that Ext. P1 only highlights the services of the first respondent to the catholic community and believers should vote for him to protect the interests of the said community. On repeated reading of Ext. P1, I felt that the dominant and all pervading theme of Ext. P1 is the interests of the catholic community and first respondent's past and expected services to the community. Even when first respondents services to the agricultural sector is mentioned in Ext. P1, it is stated that community members have high stake in the agricultural sector and therefore first respondent should win in the election. Therefore central theme of Ext. P1, as understood by witnesses who satisfy the test of common man's understanding of it and on reading it, I am' also convinced that a second reading is not required for any ordinary elector to understand Ext. P1 as a direct appeal to members of the catholic community to vote for the first respondent, because it is stated in so many words therein that he is a member of the said community, it's leader and the person for whom community is indebted for his past services and on whom community can bank upon for future help and services. Above all, Ext. P1 does not contain the name of the press and it has come in evidence that it was printed and circulated at the fag end of election, that too only in the catholic families secretly and in a clandestine manner. This only shows that those who have printed and circulated Ext. P1 were also aware of it's objectionable nature in as much as they were aware that if it is noticed, the same will have adverse consequences on first respondent's election results. In other words, the understanding of those who printed and circulated Ext. P1 is also consistent with the above finding. While considering the effect of Ext. P1, I am not unmindful of the consistent decisions of the Supreme Court relied on by

counsel for the first respondent, particularly in **RAJENDRASINGH V. CHANDRASINGH**, A.I.R. 1979 SC 882 holding that the degree of proof required to establish corrupt practice in an election petition is as in a criminal case and interference will be justified only if no other possibility exists and the only conclusion possible should be corrupt practice. However, from the above discussion, I am of the view that Ext. P1 does not convey any other idea except a direct request to members of the catholic community to vote for the first respondent on the ground of his community, and his services in the past and expected for future to the community. Therefore I hold that Ext. P1 is a direct appeal to electors to vote on the ground of religion of the first respondent.

7. So far as Ext. P2 is concerned, petitioner has no case that it independently constitutes an appeal to vote on the ground of religion of the first respondent. Even though Pope is the Head of the Catholic Church and the picture of Pope with cross on his robes is the pre-dominant feature of Ext. P2, still petitioner does not contend that it is a religious symbol to attract corrupt practice independently under Section 123(3) of the Act. However, petitioner's case is that Ext. P2 is to be taken along with Ext. P1 and it was circulated along with Ext. P1 and circulation of both among electors together constitute an appeal to vote for the first respondent on the ground of his religion. The beatification ceremony of Mother Teresa that took place at Rome wherein the first respondent participated as a Central Minister and representative of the Government of India is stated in last but one paragraph of Ext. P1. It is so printed in Ext. P2 also. In fact Ext. P2 is a pictorial representation of what is stated in the said paragraph of Ext. P1. Witnesses who have been examined in Court, and particularly PWs. 20 and 23, have stated that they attach great significance to the picture of Pope and Ext. P2 picture calendar is still hanging in the houses and shops of those witnesses. PW12 and PW19 have stated that during election work for petitioner, they saw Ext. P2 calendar hanging in the houses of PW10, PW11, PW6 and the houses of other people also. Ext. P2 is found to be a pictorial representation of part of what is stated in Ext. P1, and all the witnesses who have given evidence stated that they received Ext. P2 along with Ext. P1. Ext. P2 though in calendar form is an attractive colour picture of Pope and first respondent with picture of Mother Teresa in the background and witnesses have stated that they are preserving Ext. P2 calendar. It is stated in Ext. P1, and it has come in evidence, that the first respondent was originally a leader of the catholics and he was the President of the Catholic Congress of the Kothamangalam Diocese and it's State Secretary. The case of the petitioner is that later he joined Kerala Congress (M) and won Parliamentary election in party tickets on several occasions. However, while as M.P. he defected from the party, formed IFDP and became a Minister in the BJP Front. The circumstance

under which his joining the BJP Front is explained in Ext. P1 as on account of selfish and personal interest of some people. The petitioner's case is that first respondent was contesting Parliamentary Election in 2004 in the same constituency where the party from which he defected had fielded second respondent as their candidate who was the son of party Chairman, then a State Minister. According to the petitioner, the first respondent who was contesting the election as a constituent of the BJP Front obviously wanted to remove any misunderstanding among catholic voters and to convey to the predominantly catholic voters of the Constituency that he continues to be loyal to the church and his services will continuously be available to the catholic community. Therefore in order to reconfirm his faith and loyalty to the church and community, he has printed Ext. P2 calendar and distributed the same along with Ext. P1, is the case of the petitioner. As already stated, Ext. P2 is complementary to and in conformity with what is stated in Ext. P1 and it is distributed along with Ext. P1 not to serve as a calendar but mainly as a picture of Pope as an incentive to electors to receive and read Ext. P1. Obviously the object and purpose of Ext. P2 are a reconfirmation of first respondent's faith in the church and in the spiritual leadership of Pope which are stated in Ext. P1. Petitioner's contention that distribution of Ext. P2 was an incentive to the electors to receive and read Ext. P1 distributed along with it, as otherwise electors do not generally read all election notices is correct and is proved by oral testimony of witnesses. The other circumstances to connect the first respondent with Ext. P2 are (1) it is printed in Ext. P2 that it is sponsored by National Farmers Front, a wing of first respondent's party, IFDP, (2) the first respondent and at the maximum the press information department of Central Govt. of which first respondent was a State Minister at election time only had possession of the photo of first respondent with Pope copied in Ext. P2 and first respondent gave no proper explanation of it reaching the press; (3) first respondent has no case that anyone else would have got Ext. P2 printed without his consent; and lastly, he is, the beneficiary of it's circulation. Therefore I hold that while Ext. P1 independently constitutes an appeal to catholic voters to vote for first respondent on the ground of his religion attracting the mischief of Section 123(3) of the Act, Ext. P2 proves, supports and strengthens Ext. P1.

8. The next question to be considered is whether Exts. P1 and P2 are printed and circulated among voters by the first respondent, his election agent or any other person with the consent and knowledge of the first respondent. The case of the petitioner as stated in the election petition and the evidence adduced comprises of two stages of the operation; one printing and distribution of copies of Exts. P1 and P2 among election offices of the first respondent, and next distribution of the same by first respondent's party workers among catholic voters. While the first

respondent denied the alleged events and his involvement in both, petitioner examined several witnesses to prove both aspects of the matter. In view of the findings above on the effect of Exts. P1 and P2 as constituting electoral offence under Section 123(3) of the Act, that is appeal to vote on the ground of religion or community of the candidate, what is to be considered next is whether there is convincing proof that Exts. P1 and P2 were distributed among the electors by the first respondent, his agent or any other person with the consent of the first respondent or his election agent. Petitioner's case also is that even if printing of Ext. P1 and Ext. P2 by the first respondent or his agent or any other person with the consent of the first respondent or his election agent is not proved, still corrupt practice is attracted, if Exts. P1 and P2 are proved to have been distributed among elector by the first respondent, his agent or any other person with the consent of the first respondent or his election agent. However, petitioner has adduced evidence on both aspects of the matter. Therefore I first proceed to consider the allegation and evidence pertaining to involvement of the first respondent and his election agent in the printing and distribution of Exts. P1 and P2 in the election offices of the first respondent prior to the alleged distribution among electors by the party workers of the first respondent.

9. According to the petitioner, and as stated in paragraph 11 of the Election petition Exts. P1 and P2 were printed at Akshara Press, Thodupuzha. Even though name of the press is required to be printed on the election materials, it is not printed in Ext. P1. However, Ext. P2 contains a statement "printed at Akshara" with the correct telephone number of the Akshara Press, Thodupuzha. The substance of the allegations of the petitioner, as stated in paragraph 11 of the Election Petition, is as follows: "The first respondent got copies of Exts. P1 and P2 printed at Akshara Press, Thodupuzha through his election agent. The first respondent through his election agent paid the printing charges also. 100 bundles each containing 500 copies each of Exts. P1 and P2 were printed. Out of this 50 bundles each of printed copies of Exts. P1 and P2 were taken delivery by the election agent of the first respondent at around 5 P.M. on 24-4-2004 in the jeep bearing Registration No. KEF 7953 owned by RW9 and driven by PW4 and the election agent distributed the same in the party offices of the first respondent referred to therein that day itself. In paragraphs 12 and 13 of the Election Petition, it is stated that the balance copies of 50 bundles each of - Exts. P1 and P2 were taken delivery from the same press by the election agent of the first respondent along with PW4 in the same jeep at 3 P.M. on 25-4-2004 and distributed the same to various election offices of the first respondent at Palai, Erattupetta and Kanjirappally. The evidence to substantiate these allegations adduced by the petitioner is the oral testimony of himself, PW4, PW5, and PW6. Even though the first respondent has denied

these allegations in the written statement, he has not pleaded therein his specific case put up at the stage of defence evidence that he and his election agent were engaged in other work elsewhere in the evening on 24-4-2004 and the petitioner's claim of their presence at the press at Thodupuzha in the evening on 24-4-2004 is incorrect. However, the first respondent in evidence set up a specific case that he was in election work full time on 24-4-2004 in the Piravom Assembly segment of the constituency and his election agent in his evidence stated that he was at Ernakulam on 24-4-2004 attending scrutiny of nomination papers till late in the evening at the Collectorate. So far as evidence of petitioner as PW1 is concerned, petitioner has admittedly no direct knowledge about the involvement of the first respondent and his election agent in the printing and distribution of copies of Exts. P1 and P2. However, he has stated in the Election Petition, proof affidavit and in the oral evidence in Court that he got specific information about it from party workers and other persons, prior to filing of the election petition. PW22, who is an old client of the Election petitioner and a party worker of the first respondent, has stated that he told the petitioner that PW4 brought Ext. P2. PW4, PW12, PW19, and PW25 stated that they gave all information received by them to the petitioner. The petitioner has given evidence consistent with the Election Petition about the involvement of the first respondent and his election agent in arranging printing and taking delivery of copies of Exts. P1 and P2 on paying printing charges. PW4, whose evidence is mainly relied on by the petitioner to connect the first respondent and his election agent to Exts. P1 and P2, has stated in evidence that he was the driver engaged in the Jeep bearing registration No. KEF 7953 used for the transport of printed copies of Exts. P1 and P2 from the Akshara printing press at Thodupuzha to various election offices of the first respondent. According to him, the Jeep was owned by one Thomas, N.U., (RW9) and it is at the instruction of the Jeep owner that he on 24-4-2004 went to the election agent of the first respondent, namely, James Anakallungal at Thodupuzha and both of them went in the Jeep to Akshara Press there. According to him, 50 bundles each of Exts. P1 and P2 were loaded in the Jeep at Akshara Press on 24-4-2004. He has also explained that one copy each of Exts. P1 and P2 was kept above every bundle and it is from such exposed copies that he came to know that the contents of the packed bundles are printed copies of Exts. P1 and P2. He further stated that at the time of loading first respondent came to the Press, and he handed over cash to his election agent Sri. James Anakallungal, who in turn paid it to the press owner. He further stated that he along with election agent of the first respondent took copies of Exts. P1 and P2 in the Jeep, first to Vazhakkulam where five bundles each of Exts. P1 and P2 were delivered at the election office of the first respondent. The witness has stated that thereafter he and the election agent of the first respondent took balance

copies of Exts. P1 and P2 in the Jeep to the election office of the first respondent at Avoli where one Mani Varghese was there to whom 5 bundles each of Exts. P1 and P2 were delivered. The Jeep, according to the witness, was then taken to the Post Office junction of Muvattupuzha, where 15 bundles each of Exts. P1 and P2 were delivered at the first respondent's election office there. The witness then says that from Muvattupuzha he went to Kothamangalam and 15 bundles each of Exts. P1 and P2 were delivered at the first respondent's election office there. The balance 10 bundles each were taken to Kolencherry and delivered in the election office of the first respondent there. According to the witness all through the election agent of the first respondent was with him in the Jeep to deliver copies of Exts. P1 and P2 as stated above. The witness further states that as instructed by the election agent of the first respondent he again went to Thodupuzha at 3 P.M. on 25-4-2004 picked up first respondent's election agent and they took delivery of balance 50 bundles each of Exts. P1 and P2 from Akshara Press. They then went in the Jeep and delivered 20 bundles each of Exts. P1 and P2 at the election office of the first respondent near Civil Station, Palai, from there the Jeep was taken to Erattupetta and then to Kanjirappally where 15 bundles each of Exts. P1 and P2 were delivered at the election offices of the first respondent on the same day. According to the witness, all through the election agent of the first respondent was traveling with him in the Jeep for delivery of copies of Exts. P1 and P2 as stated above. Thereafter on the same day, the Jeep was taken to election office of the first respondent at Muvattupuzha where from 15 bundles of Exts. P1 and P2 were loaded in the Jeep. The election agent of the first respondent, according to the witness, requested him to take it to Piravom and deliver it to the first respondent's election office there, which, according to the witness, he did. The witness is stated to have reported details of the trips to the owner of the vehicle. The evidence of PW4 is corroborated by PW5 who has stated that he was a temporary employee in the Akshara press during April-May, 2004 engaged to handle excess printing work on account of election. According to PW5 the election agent of the first respondent arranged printing of Exts. P1 and P2 and he came with the jeep driven by PW4 at around 5 P.M. to the Akshara Press, Thodupuzha on 24-4-2004 and PW5 who was involved in packing of printed copies of Exts. P1 and P2 helped in the loading the bundles in the jeep. Around 50% of the printed materials were loaded on that day and it is from the conversation between the election agent of the first respondent and PW4 that PW5 could get the name of PW4 is what is stated by him in Court. He also states that first respondent came to the press at the same time and handed over cash to election agent of the first respondent who in turn paid it to the press owner towards printing charges. Even though PW4 does not state the time at which copies of Exts. P1 and P2 were taken delivery from the Akshara press on 24-4-2005,

PW5 says it was at 5 P.M. Further, PW6 also corroborates the evidence of PW5 about the time of taking delivery when he says that jeep brought the printed copies of Exts. P1 and P2 to the election office of the first respondent at Vazhakulam near Thodupuzha around 5.30 P.M. on 24-4-2004. PW6 says that at the request of one Mr. Anil Johny, a party worker of the first respondent, he helped in unloading copies of Exts. P1 and P2 from the jeep to the election office of the first respondent. PW6 further states that he was given one copy each of Exts. P1 and P2 by the said party worker of the first respondent. The presence of first respondent along with the person in whose name Ext. P1 is printed, namely, John Kachiramattom on that day at Vazhakulam at 5.30 P.M. is stated by PW6. He further deposed that election meeting was held at 5.30 P.M. on 24-4-2004 at Vazhakulam where first respondent was present and Mr. John Kachiramattom spoke mentioning the services of the first respondent to the Catholic community and the need to vote for him to protect the interests of the community. If the version given by PWs. 4, 5 and 6 are believed, then the involvement of the first respondent and his election agent in the printing and taking delivery and distribution of printed copies of Exts. P1 and P2 at the election office of the first respondent as stated in the Election Petition stand proved. However, the question to be considered is whether these witnesses are believable or not. The Supreme Court has cautioned in several judgments and particularly in the decision relied on by counsel for the first respondent in *M. NARAYANA RAO V. C. VENAKATA REDDY*, A.I.R. 1977 SC 208 that in election cases, oral testimony of the witnesses should not be believed on the face value. Oral evidence therefore should be subject to critical scrutiny and unless it is natural, convincing and absolutely trustworthy, Court should not believe and act upon the same. The cross-examination did not serve the purpose of discrediting the evidence of any of the witnesses stated above. Apart from the usual suggestive questions asked in cross alleging political loyalty of the witnesses to the party to which election petitioner belongs, nothing is brought out in evidence to substantiate that PW4, PW5 and PW6 are interested witnesses. Even though oral evidence of PW4, PW5, and PW6 do not stand discredited in cross-examination and are free from self-contradictions or contradictions among witnesses, the first respondent adduced documentary as well as oral evidence to disprove the evidence of PWs. 4, 5 and 6 and to prove that he and his election agent were not in Thodupuzha on 24-4-2004, which I proceed to consider now.

10. In order to discredit the evidence of PW4 and PW5 the first respondent, apart from giving evidence as RW1, examined the owner of the press as RW6. In fact, this witness was first cited as a witness for the election petitioner, and he was later given up. This witness was examined by the first respondent to disprove the evidence

of PW4 and PW5 about arrangement of printing and taking delivery of printed copies of Exts. P1 and P2 by the election agent of the first respondent and the first respondent's presence, payment of printing charges, etc. at the Press on 24-4-2004 as discussed above. RW6 in his evidence has admitted that first respondent and his election agent are known to him for a long period and he had done printing work for the first respondent during election time in 2004. Even though he has denied printing of Exts. P1 and P2 at his press, it is conceded by him that Ext. P2 can be printed in his press and it is printed in Ext. P2 that it is "printed at Akshara" and correct telephone number of the Press is also printed on it. The copy of declaration given by him to the Collectorate and the licence issued to him by the local authority are marked through the witness as Exts. R 1(e) and R 1(f). However, the witness admitted that these documents were handed over to the advocate of the first respondent by his brother and further stated that it would have been done at the request of the advocate of the first respondent or election agent of the first respondent. Moreover if the allegation of the election petitioner is proved, then the printing of an offensive election material like Ext. P1 in RW6's press without mentioning name of Press and filing copy before Returning Officer amounts to an electoral offence under Section 127A of the Act. The witness even after conceding that the press had printing work during election time from several candidates, still insists that no temporary worker was engaged to take care of the extra work of the season. In the names of employees furnished by him, he does not include Lissy, the lady worker who according to PW5 did the beeding work of Ext. P2 calendar. It is to be noted that even before the witness was shown Ext. P2, he volunteered information that colour printing is not normally done in the press and in order to print 10,000 copies of colour printing, it may take four to five days. Even though Ext. R1 (e) licence was produced by him to prove that he did to have the required type of motor to print Ext. P2, it is conceded by him in the cross-examination that Ext. R1(e) produced was valid only upto 17-6-1999 and the machinery referred to therein are those which remained installed in the year 1999 while the alleged printing of Ext. P2 was done in April, 2004. The witness also concedes that the election agent of the first respondent has gone to his press four or five times for printing election materials for the first respondent. Apart from denial of printing, temporary employment of PW5 and the lady who, PW5 stated, has done beeding work for Ext. P2, the balance evidence given by RW6 does not go against the case of the election petitioner because RW6 has conceded that election materials of first respondent were printed in his press and first respondent's election agent visited the press four to five times. Ext. P2 also contains the name of the press and its correct telephone number. Since Ext. P2 is not an offensive election material independently, the name of the press and its telephone number are printed on it. The only question to be

considered is whether evidence of RW6 is to be believed about the employment of PW5 and other lady employee above referred, namely, Lissy, or whether the contra evidence of PW5 should be believed. I am unable to accept the version given by RW6 for several reasons. In view of the availability of extra work during election season conceded by him, it is unlikely that he did not employ any temporary hand which is unrealistic, and difficult to be believed. Obviously there cannot be any record about temporary employees' engagement in a press. Moreover, it is admitted that RW6 volunteered to help the first respondent in the election case by first furnishing documents to counsel for first respondent and later by giving oral evidence. As already stated his evidence is self-serving, that is to protect him from an electoral offence and to help first respondent, a valued customer. Moreover, PW5 who was subjected to extensive cross-examination without any difficulty gave entire details of the press of RW6 and the meticulous details furnished by him include names of all employees employed, respective work done by each of them, type of machines installed and names of customers for whom printing work was done, candidates who visited the press during election time and all these would go to establish his familiarity with the press as an insider and his evidence is therefore natural and convincing. Another witness examined by the first respondent to disprove the evidence of PW5 is RW10 who is the owner of the building at Thodupuzha where Akshara Press is functioning. The witness has stated that some other rooms in the building, activities in which were mentioned by PW5 were remaining vacant at that time. However, the witness in cross-examination has conceded that he has not reported vacancy remission to the Municipality for claiming tax exemption for such period. No major contradiction is proved through this witness against the evidence of PW5. Apart from the first respondent examined as RW1 and his election agent examined as RW11, the other witnesses, RWs. 2 to 4 and RW8 were examined basically to prove that first respondent was away on election tour in Piravom Assembly segment on the whole day of 24-4-2004 which is contrary to the claim and evidence produced by the election petitioner about his presence in the Akshara Press at Thodupuzha at 5 P.M. and later at Vazhakkulam at 5.30 P.M. on 24-4-2004. RW2 admittedly a party worker of the first respondent has stated that on 24-4-2004 he was the driver engaged in the jeep bearing registration No. KL-7-AD 1931 for the first respondent's election work and he was driving the first respondent in the said jeep in Mulanthuruthy area from 3 P.M. to 8 P.M. on that day. In cross-examination he admitted that he was an office-bearer of the first respondent's party and was an accused in a criminal case. RW3 and RW4 were Mandalam President of the first respondent's party in Mulanthuruthy and Chottanikkara

and they have also given evidence stating that the first respondent was on election tour in Mulanthuruthy and Chottanikkara area in the evening on 24-4-2004. RW5 who is an advocate and office bearer of the first respondent's party has stated that Ext. R1(b) was filed before the District Collector and first respondent conducted election tour in Piravom Assembly segment on 24-4-2004 in terms of Ext. R1(b) programme. The witness has further stated that Ext. R1(c) is the news item about the election tour of the first respondent held on 24-4-2004. The witness was for some-time Central Government Standing Counsel in the High Court appointed by the first respondent. RW6, the proprietrix of the Swaraj Off-set printers was examined to prove Ext. R1(b) which she says was printed in her press and copy of which was filed before the Returning Officer. So far as the evidence of RW11 is concerned, he denies the evidence of PW4, PW5 and PW6 about taking delivery of printed copies of Exts. P1 and P2 and distribution of the same among the election offices of the first respondent as stated by the said witnesses on 24-4-2004 and 25-4-2004. The specific case of RW11 who is the election agent of the first respondent is that he was in the Collectorate at Ernakulam in the evening on 24-4-2004 attending the proceedings of scrutiny of nomination papers. Even though the name of PW5 is not mentioned in Election Petition which is highlighted by counsel for the first respondent, the petitioner has stated about information received from PW5 in his proof affidavit. The defence evidence furnished to discredit the evidence of PW4 is that of RW9, who is the owner of the jeep bearing registration No. KEF 7953 used by the election agent of the first respondent to take delivery of printed copies of Exts. P1 and P2 from the Akshara Press and for distribution in the election offices of the first respondent on 24-4-2004 and 25-4-2004 as stated by PW4, who was it's driver. Even though this witness says that he was the owner of the jeep, he has stated that he does not know when the jeep was purchased. His case is that jeep was with him only for eight days. He however, admits that PW4 was employed as a temporary driver in a bus run by him in partnership with a partner by name Sri. Soman. In cross-examination the witness admits that there is no documentary evidence towards proof of partnership in the business. This witness though initially was cited as a witness for the election petitioner, he was given up. Later he appeared as a witness for the defence. Even though he admits ownership of the vehicle, he says it was purchased only for re-sale and sale was made after holding it for eight days. If his case is believed, he has only acted as a dealer or broker of the vehicle and it is usual practice for such people not to change the registration of the vehicle which is held as stock in trade and contrary to this practice, witness admittedly changed the registration of the vehicle and claims to have sold it after holding the vehicle for eight

days. Since his answers are generally evasive and the partnership business in which he admittedly engaged PW4 as a driver is without any document, as admitted by him, I do not think the evidence of this witness is trustworthy or believable. Therefore I find no justification to reject the evidence of PW4 based on contrary statement made by RW9.

11. The next issue to be considered is whether the documents Exts. R1 (b) and R1 (c) and the oral evidence of witnesses produced on behalf of the first respondent would establish his presence on 24-4-2004 at Piravom Constituency far away from Thodupuzha where the press is located and his election agent's presence at Ernakulam in the Collectorate attending the hearing on that day. If the case of the first respondent that he and his election were out of Thodupuzha in the evening of 24-4-2004 is correct, then of course, the case of the election petitioner proved through oral evidence of PW4, PW5, and PW6 would stand completely discredited. When a controversy of this nature arose, that is as to whether the counter evidence produced by the first respondent would establish his presence in the Piravom Constituency and that of his election agent in the Collectorate in the evening of 24-4-2004, this Court vide order dated 9-6-2006 issued appropriate directions to the Returning Officer and gave an opportunity to the election petitioner and the first respondent to obtain and produce records from the Returning Officer's office. Ext. R1 (b) is the printed copy of election tour programme of the first respondent for Piravom Assembly segment of the constituency, that was stated to be fixed for 24-4-2004. First respondent has a specific case that Ext. R1 (b) was printed in the press owned by RW8 who when examined on behalf of the first respondent stated in Court that though no record is maintained to prove filing of Ext. R1 (b) declaration, it was in fact filed before the District Collector, i.e., the Returning Officer. The filing of copy of Ext. R1 (b) in the office of the Returning Officer is stated by Advocate Sri. Saji John, examined as RW5, who claims to have arranged printing of Ext. R1 (b). If the evidence of these witnesses is correct, then copy of Ext. R1 (b) should be available in election records maintained by the Returning Officer. Similarly, if the case of the first respondent that he was on election tour on 24-4-2004, he should have obtained vehicle pass as every candidate under the Conduct of Election Rules is required to obtain a pass for use of vehicle for election work. Records pertaining to issue of pass also would be available in the office of the Returning Officer. Further, if the election agent of the first respondent was engaged in scrutiny of nomination papers at the Collectorate in the evening on 24-4-2004, then the same would be borne out by records of proceedings of the Returning Officer. Therefore the interim direction issued by this Court on

9.6.2006 to the Returning Officer gave an opportunity to the first respondent also to substantiate with official records his case that he and his election agent were not at Thodupuzha in the evening of 24-4-2004 which was attempted to be proved through his witnesses, all except two of them were admittedly party workers and hence interested witnesses. Even though such an opportunity was granted by this Court, the first respondent did not bother to verify records with the Returning Officer and substantiate his claim. On the other hand, election petitioner obtained and produced Annexures III to VII certificates and documents from the office of the Returning Officer. Counsel for the first respondent has relied on the decision of the Supreme Court in Bashir Musa Patel V. Satyawan Granpat Jawkar, (1997) 1 SCC 751 and contended that court should not give opportunity to petitioner to fill up gap in evidence which will prejudice the opposite party at the trial as held in the said decision. The purpose of issuing direction to Returning Officer on 9-6-2006 to permit parties to collect details from election records is to verify correctness of oral and documentary evidence produced by parties which are diametrically opposite. Annexures III to VII documents issued by the Returning Officer and produced by the election petitioner are not evidence produced by the election petitioner, but are obtained and produced pursuant to the direction issued by this Court to the Returning Officer in exercise of authority conferred on it under Order XI, Rule 14 of the CPC which authorizes a Court trying a suit, at any time to call for documents from the possession of any authority and to deal with such documents in such manner as it shall appear just to the court. It has been held by the Supreme Court in the decision in Seshadri V/s. G.V. PAI, A.I.R. 1969 S.C. 692 that though trial should be at arms length and court should not enter into as a third party, but it is not to be understood that court has no power to summon a witness or to call for records which would throw light upon the matter particularly of corrupt practice which is alleged and is being sought to be proved. In view of the power of the court as explained above by the Supreme Court, I overrule the objections raised by the first respondent and allow I.A. No. 4 of 2006 filed by the petitioner to receive Annexures III to VII. However, these documents are not treated as evidence on behalf of the election petitioner, but are considered as documents summoned by the court under Order XI, Rule 14 of the CPC for the purpose of verifying the correctness of the conflicting evidence adduced by the parties. In the first place, the Returning Officer vide Annexure V certified that the first respondent's tour programme on 24-4-2004, namely, Ext. R1 (A) produced along with proof affidavit (which is marked as Ext. R1 (b) in evidence) is not seen in the office of the Returning Officer though it is claimed by RW8 and RW5 that it

was filed before the Returning Officer. Similarly, as is clear from Annexures VI & VII that the first respondent has never obtained any vehicle pass for the vehicle bearing registration No. KL-7AD-1931 which according to RW2, its driver, was used for election work by first respondent for 18 days from 21.4.2004 onwards. Even assuming that candidature of first respondent was not officially announced as on 24.4.2004 and on that day vehicle pass was not required, still there is no explanation why, when passes were obtained for several vehicles on 27-4-2004, as is clear from Annexure VI, no vehicle pass was obtained for the vehicle KL-7AD 1931 which was claimed to be used for election work by first respondent on 24-4-2004 and 17 other days as stated by RW2. Further, the claim of the election agent that he was attending the scrutiny of nomination papers at the Collectorate late in the evening of 24-4-2004 is also incorrect because the Returning Officer's Annexure IV series of proceedings show that hearing on scrutiny of nomination papers was held on 26-4-2004 and it did not pertain to nomination papers of petitioner or first respondent. In these circumstances, if the case of the first respondent that he was in election campaign at Piravom and his election agent was in the Collectorate in the evening of 24-4-2004 are to be believed, then it has to be assumed that the first respondent who had contested elections several times and familiar with Election Rules used the vehicle for full time for election campaign after publishing tour programme in advance without obtaining a vehicle pass or that the records maintained at the Returning Office's office evident from Annexures IV & VI are false and unbelievable. In the first place, there is no justification to doubt the genuineness of Annexures IV & VI issued by the Returning Officer which form part of election records. Secondly, even though first respondent has raised technical objection about the legality of this Court admitting Annexures III to VII obtained and produced by the election petitioner from the Returning Officer, he has not chosen to challenge the correctness of the documents by filing application in this Court to call for election records for verification or sought cross-examination of the Returning Officer who issued the said certificates and copies of proceedings after scrutiny of records. So far as technical objection about admissibility of Annexures III to VII are concerned, the first respondent's contention that it is in the nature of documentary evidence for the petitioner facilitated by court order is incorrect. The fact that documents summoned by Court helps one party and consequently affects the other does not affect its admissibility. Therefore I proceed to consider these documents along with other evidence in this case. Apart from Annexures III to VII produced from the Returning Officer's office discrediting the case of the first respondent that he and his election agent were away from Thodupuzha in the evening of 24-4-2004 to receive the printed copies of Exts. P1 and P2 from the Press, as alleged in Election petition and stated by

witnesses, there is one another important aspect which assumes significance when this Court considers version of which of the parties is correct. The first respondent's familiarity with election laws is evident from the preliminary objection raised by him against maintainability of election petition. However, in spite of specific averments in paragraph 11 of the election petition alleging the presence of first respondent at 5.45 P.M. at Vazhakkulam on 24-4-2004 and his election agent at Akshara Press at Thodupuzha in the evening of 24-4-2004, the election agent then taking delivery of printed copies of Exts. P1 and P2, and distributing the same in the election offices of the first respondent in the whole of evening on 24-4-2004, the first respondent has not chosen to make a statement in the written statement that on 24-4-2004 he was away on election tour at Piravom constituency based on previously fixed programme, which is the case put forward by him in evidence. Similarly, he could have stated that his election agent, who was his associate lawyer and was always his election agent in almost all his elections was in the Collectorate on 24-4-2004 attending scrutiny of nomination papers. The absence of such a statement in the Written Statement cannot be taken as an omission and therefore I am of the view that if first respondent's claim later put up in evidence was true, he would have stated the same in the written statement itself. It is also to be noted that no suggestive question was asked to any of the petitioner's witnesses who deposed on these matters confronting them with the defence claim of the presence of first respondent at Piravom Assembly segment of the constituency on 24-4-2004 and his election agent's engagement in the Collectorate on that day. Even though PW6 specifically stated about the presence of first respondent in election meeting at 5.30 P.M. on 24-4-2004 at Vazhakkulam, near Thodupuzha, no question is asked denying it or about presence of first respondent at Mulanthuruthy at that time as claimed by him. Therefore I feel the defence case of his being away from Thodupuzha on 24-4-2004 set up by first respondent at a later stage is a fabricated story cooked up to get over when the specific case of the election petitioner was proved through convincing testimony of witnesses. Ext.R1 (c) being a newspaper report, as held by Supreme Court in Raj Shetty's case reported in (1995) 6 SCC 758, has no independent evidentiary value and the same therefore does not establish first respondent's claim of election tour on 24-4-2004. In view of this finding, I hold that the oral and documentary evidence furnished by the first respondent and his witnesses who spoke about his election work at Mulanthuruthy and Chottanikkara areas of Piravom Assembly segment in the evening of 24-4-2004 are wrong and unbelievable. On the other hand, I find that the evidence of independent witnesses, namely, PW4, PW5, PW6 and PW22 are natural, trust-worthy and believable. Further, apart from denial through interested oral testimony of RW11, the election agent of the first

respondent, there is no counter evidence against the evidence given by PW4 about taking delivery from Akshara Press and distribution of copies of Exts. P1 and P2 in the election offices of first respondent at Palai, Erattupetta, and Kanjirappally by the election agent of the first respondent in the Jeep driven by PW4 in the evening on 25-4-2004 and the election agent of first respondent sending 15 bundles of Exts. P1 and P2 from the election office of the first respondent at Muvattupuzha through PW4 in the Jeep for delivery at election office of the first respondent at Piravom. In the circumstances and in view of the convincing evidence of independent witnesses, namely, PW4, PW5, PW6 and PW22, the arrangement of printing and taking delivery of printed copies of Exts. P1 and P2 by the election agent of the first respondent from Akshara Press, Thodupuzha and the payment of printing charges by the first respondent through his election agent, and the distribution of printed copies of Exts. P1 and P2 in the election offices of the first respondent by his election agent along with PW4 in the evening of 24-4-2004 and 25-4-2004 and the participation of first respondent in the election meeting held at Vazhakkulam at 5.30 P.M. on 24-4-2004 where Mr. John Kaohiramattom spoke, stand proved beyond any doubt.

12. The next issue to be considered is the allegation of circulation of Exts. P1 and P2 among electors by the first respondent or his election agent or any person with the consent and knowledge of first respondent or his election agent. The witnesses who deposed about the circulation of Exts. P1 and P2, among voters in the constituency, are PWs. 1, 2, 6 to 12, PW19, PW20, PW22, PW 23 and PW 25. Since the case of the election petitioner is that he got information about distribution of Exts. P1 and P2 from his party workers, his evidence is not of much assistance. Similarly PW12, PW19, PW21 and PW25 are also admittedly party workers of the election petitioner and therefore they are naturally biased witnesses and their evidence cannot be independently relied upon for holding against the first respondent. However, I feel their evidence can be considered along with the evidence of independent witnesses and can be relied upon for corroboration. Among the independent witnesses, first one who spoke about circulation of Exts. P1 and P2 is PW2 who is from Poonjar Assembly segment of the constituency. The witness specifically states that Exts. P1 and P2 were given to him in his house on 8.5.2004 by the workers of IFDP whose candidate is the first respondent. According to witness, one Advocate Roy and Babu Pulickal and some other party workers of the first respondent who came from Erattupetta, a neighbouring area, gave Exts. P1 and P2 to him with a request to vote for the first respondent. In cross-examination the witness gave the names of some of the balance party workers of the first respondent who went to his house with Exts. P1 and P2 as Shaji, Joseph, Anil and Saji. According to the witness these persons

were generally engaged in party work of the first respondent by affixing posters, giving slips, etc. Even though counsel for the first respondent asked a suggestive question to the witness that he is a DYFI worker, the answer was in the negative. PW6 has stated that when he was standing in front of the election office of the first respondent at Vazhakkulam town in the evening of 24-4-2004 a Jeep came and unloaded some bundles. A party worker of the first respondent by name Anil Johny requested the witness to take the bundles to the election office of the first respondent, which he did. The said Anil Johny is stated to be a friend of the witness and therefore he obliged is what PW6 has stated. The witness further stated that he was given copies of Exts. P1 and P2 by Anil Johny. When witness is shown Exts. P1 and P2 in Court, he identifies the same and stated that copies given to him were that of Exts. P1 and P2.

13. PW7 who is running a tea shop on the road side in Avoli is another witness who spoke about receipt of copies of Exts. P1 and P2 both in his tea shop and in his house. He further stated that he received copies of Exts. P1 and P2 in his house delivered by one Arakkal Mani and Mathew. He stated in his evidence that after reading Ext. P1 he felt that if Catholic community has to get any benefit, they have to vote for the first respondent. He also stated that general view of the people in the area who are 75% Catholics is the same. PW8 is a business man doing business in Avoli, where first respondent was maintaining election committee office. He also stated that he received copies of Exts. P1 and P2 and identified the copies received by him with that of Exts. P1 and P2 shown in court. In the cross-examination he has specifically stated that notice and leaflet were received only after the middle of April, 2004 and it is the party workers of first respondent who distributed the same. In the re-examination, the witness clarifies that if the first respondent is elected benefits will be reived by the Catholic community. PW9 is a person engaged in pineapple business in Vazhakkulam, whose shop is in the market. He confirms having received Exts. P1 and P2 during election time and identifies copies received by him as that of Exts. P1 and P2 shown in court. According to him, what is written in Ext. P1 is that if the first respondent wins, he will become a Minister, and it will be beneficial to the Catholic community. In the cross-examination, the witness confirms that Exts. P1 and P2 were published during election time, even though calendar is normally published in the beginning of the year. He is stated to have passed on information about receipt of Exts. P1 and P2 to party workers of the petitioner. PW10 is a financier doing business in Kothamangalam which is an assembly constituency within the same Parliamentary constituency. He also confirms having received Exts. P1 and P2 in his house delivered by one Mr. Benny George and T. M. Jacob who he states are party workers of the first respondent. He clarifies in his evidence that on reading

of Ext. P1 and seeing Ext. P2 calendar what he understood was that first respondent is a person who stands for Catholic community. He further explains that Exts. P1 and P2 were discussed among family members and all of them formed the same opinion that first respondents stands for Catholic community and goes for their help as and when required. According to him they made every effort to see that first respondent wins the election. He has further stated that he went to his friends with copies of Exts. P1 and P2 and requested them to vote for the first respondent. Witness further adds that on being convinced that first respondent stands for Catholic community, he canvassed for the success of the first respondent in the election. According to him he stated all these matters to one Sojan Thomas who is a party worker of the petitioner. In the cross-examination, witness confirms that Sri John Kachiramattom in whose name Ext. P1 is published was the President of the Catholic Congress which is a religious organisation. Witness also clarifies that what is stated in Ext. P1 is that efforts should be made to see that first respondent wins the election. He specifically stated that Ext. P2 calendar was distributed during election time that too along with Ext. P1. PW11 who is a building contractor also from Kothamangalam has stated that Exts. P1 and P2 were delivered to his house by Benny George Pulickal and TM Jacob who were identified as party workers of the first respondent by PW10. He identifies copies received by him as that of Exts. P1 and P2 shown in Court. According to the witness, even though calendars are published and distributed usually in the beginning of the year, Ext. P2 was received during election time. He also stated that Exts. P1 and P2 were published with the object of conveying the idea that first respondent is the leader of Catholic and he was the President of the Catholic Congress of Kothamangalam Diocese. PW12 is a party worker of the petitioner who campaigned for the petitioner. According to him, he was going from house to house canvassing votes for the petitioner and he saw Ext. P2 calendar in the houses of several persons. He identifies that copies seen by him in the houses of voters as that of Ext. P2 shown in Court. According to him, the matter was discussed in the party office at Kothamangalam and he spoke therein stating that first respondent was appealing for vote by invoking communal sentiments through Exts. P1 and P2. The witness further stated that the persons in whose houses he saw Exts. P1 and P2 told him that those materials were delivered to them by Benny George Pulickal and TM Jacob. PW19 is also a CPI (M) party worker who stated that he was going from house to house canvassing votes for the petitioner. He went to the house of one Reji Kalluvettuparambil where he saw Ext. P2 calendar hanging in the house of that person. According to him, Sri Reji Kalluvettuparambil, who was examined as PW6 told him that on 24th April, 2004 around 4.30 P.M. a jeep brought bundles of Exts. P1 and P2 to Vazhakulam and he was called to unload the same by the party worker of the first

respondent by name Anil Johny. According to witness, PW6 told him that after unloading the said Anil Johny gave PW6 one copy each of Exts. P1 and P2. Witness identifies Ext. P2 in Court, the copy of which he saw hanging in the house of Mr. Reji. He also stated that he received copy of Ext. P1 original of which is identified by him in Court. He also states that he went to the house of another person Mr. Vellikunnel Antony, and he saw Ext. P2 calendar in that house also. The other persons' houses where he saw Ext. P2 calendar are stated by him as Valliparambil Jacob and Thaikandathil Thankachan, both in Vazhakkulam and Chackochan, Thonikuzhy. Witness further adds that those persons in whose houses he saw Ext. P2 calendar told him when asked that calendar was distributed in those houses by the party workers of the first respondent, Anil Johny and Devasia. Witness also stated that in his Panchayat alone the petitioner got 574 votes less than the votes secured by the Left Front candidate in the Assembly election. The special feature of the Parliamentary election 2004 is a tri-partite contest is what he stated. It is also stated by the witness as his opinion that the reduction in vote for petitioner is on account of influence exerted on members of the Catholic community through Ext. P1 publication. According to the witness, Exts. P1 and P2 helped first respondent's success. On being asked in cross-examination, inspite of knowing Exts. P1 and P2 circulated among voters, why the witness did not complain to the authorities concerned, he answered that by the time he got specific information, it was too late to complain against Exts. P1 and P2. PW20 who is a lady engaged in tailoring in Perumballur in Arakuzha Panchayat, which is within the Muvattupuzha Parliamentary constituency, has confirmed receipt of copies of Exts. P1 and P2 and identified the same as copies of Exts. P1 and P2 shown in Court. Witness says that Ext. P2 calendar is there in her house and in her shop. She confirms she is a roman Catholic and states that after reading Ext. P1 and after seeing Ext. P2 she felt that first respondent is a person who helps us, and if we vote for him, members of the community will be benefited. She confirms that her friends also received copies of Exts. P1 and P2. Her further statement is that petitioner came to her shop and asked her as to who gave copy of Exts. P1 and P2. She told him that copies of Exts. P1 and P2 were given by one Jose and Sijo, and she was very happy to receive the calendar. She expressed her admiration for the first respondent for having got photographed with Pope. Witness adds that Ext. P1 was received along with Ext. P2. On being asked, when Ext. P2 calendar was received by her, she stated that she received it some time in May, 2004. PW21 is a party worker of the petitioner. He says that Baby Michael Odakkal is a party worker of the first respondent. According to him a party meeting was held on 15.5.2004 to discuss about the 2004 Parliamentary election results. The witness stated that Palai Assembly constituency has 60% Catholic votes and votes were

canvassed by the first respondent by distributing Ext. P2 calendar containing his photograph with Mother Teresa and Pope who are held in high esteem by the members of the Catholic community. According to him, Ext. P1 notice was also distributed along with calendar. Witness identifies Exts. P1 and P2 the copies of which were distributed by the first respondent. He has also stated that one Benny Thomas of Valavoor and one Joy Michael of Vayappa told him that Baby Michael Odakkal, a party worker of the first respondent, gave copies of Exts. P1 and P2 to their houses and other houses. The impact of Exts. P1 and P2 according to him is on older generation people who otherwise would have voted for left front candidate, cast their vote for the first respondent. In cross-examination the witness says that people above the age of 45 years generally tend to go by religious sentiments. PW22 examined on behalf of the petitioner has stated that he was a party worker of the first respondent, and was campaigning in the 2004 Parliamentary election for the first respondent by going from house to house and asking for vote. He has stated that local leader of the party was one Elias and the witness is stated to have distributed slips, leaflets, etc., which included copies of Exts. P1 and P2. Witness when shown originals of Exts. P1 and P2 in Court stated that its copies were supplied by them to Catholic houses. He has given the names of three houses where Exts. P1 and P2 were delivered and the names of such persons are Thadathil Joseph, Nedumala Jose and John Elanjimattom. He has also stated that after distributing Exts. P1 and P2 they used to ask for vote for the first respondent. He is the person who informed the election petitioner about what he has done and he introduced PW4 who is known to him for the last 4 to 5 years to the election petitioner. In cross-examination the witness states that he continues to be loyal to the first respondent, but told the election petitioner about the role played by him as stated above. His connection with the election petitioner is that he availed services of the election petitioner as an advocate. The witness also states that he is not giving any evidence in favour of the election petitioner, but he is saying only what he has done. PW23 was also examined to prove the receipt of Exts. P1 and P2. The witness states that a party worker of the first respondent by name Anil Johny gave copies of Exts. P1 and P2. Witness identifies Exts. P1 and P2 shown in court as copies of what was received by him. According to the witness, Exts. P1 and P2 were delivered during election time and those who gave the same requested him to vote for the first respondent. The witness further stated that by reading Ext. P1 he understood that first respondent was the previous President of the Catholic Congress and the present President Sri John Kachiramattom is requesting to vote for the first respondent. Witness further says that Ext. P1 highlights the lot of pains taken by the first respondent for the Catholic community. Witness also stated that after reading Ext. P1 he decided to vote for the first respondent.

The house of the witness is on the road side and from the road, Ext. P2 calendar hanging in his house was seen by one Parameswaran and he confirms that he has given information about receipt of Exts. P1 and P2 to Sri Parameswaran, a party worker of the election petitioner, who was examined as PW19. In the cross-examination witness has stated that Sri Parameswaran happened to ask him about receipt of Ext. P2 calendar when the latter saw it hanging in the house of the witness. On a specific question in cross-examination as to whether family members of the witness will vote based on religion, witness has stated that they vote for the person who stands for the community. PW 24 is another witness examined to prove distribution of Exts. P1 and P2. Witness stated that he has received copies of Exts. P1 and P2 and he identified copies received by him as copies of Exts. P1 and P2 shown in court. Witness further stated that Baby Michael Odakkal and Sunil Kumar gave copies of Exts. P1 and P2. He confirms that these two persons are party workers of the first respondent. They told the witness that first respondent has done lot of help to the community in North India and they should vote for the first respondent. He further stated that he and his wife after discussion decided to vote for the first respondent and in fact cast their vote in his favour. Exts. P1 and P2 are stated to be received in their house towards the end of April, 2004. Witness appears to have told this to the party worker of the election petitioner by name Lalichan who was examined as PW21. PW25 is an advocate and party worker of the first respondent. He was examined mainly to prove the evidence of other witnesses. Witness was shown the originals of Exts. P1 and P2 and he confirmed having seen copies of the same distributed in the area. He has given the names of persons who informed about receipt of Exts. P1 and P2. The witness says that the persons who informed him about receipt of Exts. P1 and P2 stated that Sri Alosious Pullattukunnel an IFDP worker, gave copies of Exts. P1 and P2 to them.

14. It is to be noted that this Court has already found that Ext. P1 independently and together with Ext. P2 is a direct appeal to electors to vote "on the ground of community and religion of the first respondent". From the evidence of petitioner's witnesses discussed above, it is proved beyond doubt that printed copies of Exts. P1 and P2 were extensively circulated in the Constituency by party workers of the first respondent. The fact that those who distributed copies of Exts. P1 and P2 are party workers is also proved by consistent evidence of the witnesses discussed above. The evidence of all the witnesses prove beyond doubt that party workers, namely, Advocate Roy, Babu Pulickal, Anil Johny, Benny George, T.M. Jacob, Baby Michael Odakkal, Sunil Kumar, etc., were mainly engaged in distribution of printed copies of Exts. P1 and P2 among the electors. The evidence of PW22 calls for specific mention because he is the only party worker of the first respondent who has come to Court to give

evidence for the election petitioner. He identifies Exts. P1 and P2 in Court and confirms that printed copies of Exts. P1 and P2 were distributed by him along with other party workers of the first respondent in Catholic houses in the Constituency. According to the witness, one Elias is the local leader of the party of the first respondent. The witness along with other party workers was engaged in door-to-door election campaign for the first respondent. The witness gives the names of some of the catholic houses, namely, Thadathil Joseph, Nedumala Jose, and John Elanjimattom, in whose houses Exts. P1 and P2 were distributed. According to the witness, along with distribution of Exts. P1 and P2 they were requesting the electors to vote for the first respondent. This witness also says that PW4, as stated by him in Court, had brought printed copies of Exts. P1 and P2. In the beginning of cross-examination, the question put to him was whether the witness has shifted loyalty from the first respondent. The answer to this question was that he is talking the truth and he still continues to be loyal to the first respondent. In fact he has stated and election petitioner has confirmed that the witness was a client of the election petitioner, who is a lawyer. The witness has further stated that his understanding is that he was not giving evidence against the first respondent and in fact prior to coming to Court he has taken permission from the local party leader of the first respondent, namely, Elias. Even though a question was asked by counsel for the first respondent that the witness is a CITU worker, it is denied by the witness and nothing is brought out in evidence to discredit the evidence of PW22. The evidence of the witness appears to be quite natural, trust-worthy and convincing. Even though the petitioner's witnesses, whose evidence is discussed above, have clearly stated the names of the party workers of the first respondent who distributed printed copies of Exts. P1 and P2 among the electors, no single question is asked in cross-examination denying any of them as party worker of the first respondent. Even though first respondent and his election agent were also examined, they have also not stated that the persons named by the petitioner's witnesses as party workers of the first respondent, found engaged in distribution of Exts. P1 and P2 were in fact not party workers of first respondent. Nothing is stated denying that they are not party workers of the first respondent and distribution of printed copies of Exts. P1 and P2 by them was without the consent of the first respondent or his election agent. Apart from the evidence given by the witnesses on distribution of Exts. P1 and P2 among electors, it has to be noted that this Court has already accepted the evidence of PW4 who has proved distribution of bundles of printed copies of Exts. P1 and P2 by the election agent of the first respondent on 24th and 25th April, 2004 in the election offices of the first respondent at various centers. Once the bundles of printed copies of Exts. P1 and P2 are in the election offices of the first respondent at various places, then it follows that only

local party workers of the first respondent have control over the copies and they can only distribute or arrange for distribution of the same among electors. As already found, Exts. P1 and P2 are printed and circulated for advancing the election prospects of the first respondent and therefore he is the beneficiary of its circulation among the electors. Obviously the purpose of distribution of printed copies of Exts. P1 and P2 in the election offices of the first respondent by his election agent is for circulation among the electors. This being the purpose of distribution of printed copies of Exts. P1 and P2 in the election offices of the first respondent, the only possible inference is that the first respondent and his election agent wanted and desired follow-up action by party workers, that is, distribution of printed copies of Exts. P1 and P2 among the electors. Since the party offices of the first respondent are under the control of the party workers, it is natural that his party workers distributed printed copies of Exts. P1 and P2 among electors which is what is proved by the witnesses. In order to establish an electoral offence under Section 123(3) of the Act, what is to be established is that appeal to vote on the ground of religion, community, etc., of the candidate was done with the consent of the candidate or his election agent. In this case, even though consent of first respondent or his election agent for distribution of Exts. P1 and P2 is not proved by direct evidence, the question is whether it can be inferred from the circumstances and the facts proved. Counsel for the petitioner relied on the decision of the Supreme Court in *N. BALAKRISHNA V. GEORGE FERNANDEZ*, A.I.R. 1969 SC 1201, wherein the Supreme Court has held as follows:

There is no doubt that consent need not be directly proved. The principle of law is settled that consent may be inferred from circumstantial evidence, but the circumstances must point unerringly to the conclusion and must not admit of any other explanation. Although trial of an election petition is made in accordance with the Code of Civil Procedure, it has been laid down that corrupt practice must be proved in the same way as a criminal charge is proved. In other words, election petitioner must prove every hypothesis except that of guilt on the part of the returned candidate or his election agent.

The question is whether consent of the first respondent or his election agent for the distribution of printed copies of Exts. P1 and P2 can be inferred in the facts of this case strictly following the law stated by the Supreme Court above, which is the consistent view taken by the Supreme Court in all election cases. The proved facts found above are that election agent of the first respondent arranged for printing of Exts. P1 and P2, the first respondent paid printing charges and the election agent distributed the bundles of printed copies of Exts. P1 and P2 in the election offices of the first respondent. Thereafter the party workers of the first respondent

distributed printed copies of Exts. P1 and P2 in the houses of electors who are catholics. From these proved facts, the only inference possible is that circulation of printed copies of Exts. P1 and P2 by the party workers of the first respondent is with the knowledge and consent of the first respondent and his election agent. In fact in view of the finding that Exts. P1 and P2 constitute appeal to vote on the ground of community and religion of the first respondent, the proof of circulation of Exts. P1 and P2 among electors with the consent of the first respondent and his election agent is sufficient to establish corrupt practice under Section 123(3) of the Act. However, in this case I have already found that there is convincing evidence of election agent of the first respondent arranging printing of copies of Exts. P1 and P2, first respondent paying printing charges and the election agent distributing the printed copies of Exts. P1 and P2 in the election offices of the first respondent prior to distribution of the same among electors by party workers. What was originally a corrupt practice under Section 123(3) was "systematic appeal" to vote on the ground of religion, community, etc. However by a later amendment the word "systematic" was deleted and at present corrupt practice is attracted even if a single appeal is made to vote on the ground of caste, community, religion, race, etc. It only shows that the object of the amendment is to achieve purity in the election process. May be in reality, many politicians violate the law which may go unnoticed or uncomplained of or may not get established in court. However these are not justifications which should weigh with the court while deciding an election petition. If the corrupt practice under Section 123(3) is established beyond doubt, then it is the duty of the election court to declare the election void as required under Section 100(1)(b) of the Act. The Supreme Court has in *Kalamatha Mohan Rao v. Narayna Rao Dharmana*, reported in (1995) 6 SCC 758 held that the contents of a poster amount to an appeal by the candidate for vote on ground of religion. It necessarily follows that circulation of Exts. P1 and P2 amount to violation of Section 123(3) of the Act. Based on the above findings, I hold that the first respondent has committed corrupt practice under Section 123(3) of the Act by appealing to the electors to vote on the ground of his community and religion through printing and circulation of Exts. P1 and P2 among the electors. Consequently, his election is liable to be declared void under Section 100(1)(b) of the Act.

15. The next issue raised in support of the challenge against election of the first respondent is corrupt practice in hiring or procuring vehicles free of charges to the electors to go to and from the polling booths falling under Section 123(5) of the Act. While the allegation is generally stated in paragraph 24 of the Election Petition, details of vehicles provided to the electors, such as registration number of the vehicles, names of the electors to whom vehicles are provided, etc., are given in paragraph 25 of

the Election Petition. Even though the allegations of use of, as many as, 13 vehicles, registration particulars of which are furnished in paragraph 25 of the Election Petition, in violation of Section 123(5) are raised, this Court while disposing of objections raised against maintainability of election petition, held that there is no correlation between all the vehicles allegedly provided and the electors to whom they are provided, except for four vehicles, i.e., two autorickshaws bearing registration Nos. KL-5-4400 and KL-5C-3431 and two jeeps bearing registration Nos. KRO 6606 and KL-5-1845, and so much so, the allegation of use of remaining nine vehicles is not included in the issues framed for trial. Consequently, the election petitioner in the proof affidavit and in the evidence adduced confined the allegations only in respect of four vehicles, registration particulars of which are given above.

16. The election petitioner in the election petition and in the proof affidavit stated that he has no direct knowledge of hiring or procuring vehicles for the use of electors in violation of Section 123(5) of the Act; but, according to him, the details are collected and furnished to him by Sri V.N. Sasidharan, election committee convenor of LDF at the Poonjar Assembly segment of the Constituency who was examined as PW25. The grounds sustained pertain to use of vehicles for transport of electors to and from polling booth Nos. 57 to 71 of Poonjar Thekkekara Panchayath, which is within the Poonjar Assembly segment of the Constituency. The electors who have been provided with facility of vehicle free of cost are examined as PW 3 and PWs. 13 to 17. PW3 has deposed that his house is 3 KMs. away from the polling booth, which is booth No. 64, in Poonjar Assembly Constituency. According to him, he had worked till noon and while he planned to take rest in the afternoon, one party worker of the first respondent by name Vakkachan came in autorickshaw bearing registration No. KL-5C 3431 to his house and he insisted him to go for vote, and though he was not interested, he went in the autorickshaw to vote only on the insistence of said Mr. Vakkachan. The witness further stated that three passengers whose names are given by him were already in the autorickshaw and he also joined them. He has clearly stated that they were first taken to the election booth office of the first respondent where he and other three passengers were given slips from that office. According to the witness, the autorickshaw took them very near to the polling booth. The witness further stated that after he cast his vote, he was asked to wait for some time in the polling booth; and the autorickshaw came after 15 minutes, took the witness and dropped him at his house. The witness has corroborated the evidence of the petitioner that information was passed on by him to the election petitioner through Mr. Sasidharan, PW25. In the cross-examination, the witness has stated that he knows the autorickshaw number only because there are only three autorickshaws

running in that area, and he even stated the registration numbers of other two autorickshaws and the names of the drivers are also disclosed by him. Nothing has come out in the cross-examination to discredit the detailed evidence given by the witness. PW13 has stated that he was taken to polling booth No. 67 to cast his vote from his house, which is 10 KMs. Away from the polling booth in a jeep brought by Mr. George Mathew, who the witness states is an important party worker of the first respondent. The witness has stated that the said party worker requested him to go to polling booth and vote for the first respondent. He has given the registration number of the vehicle as KL-5 1845 which is the registration number given in the election petition and proof affidavit. Witness says that he is familiar with the vehicle and that he was taken to the first respondent's booth office, where he was given slip and then he was taken to the polling booth. After he cast his vote, he states he was dropped at his house in the same vehicle. PW14 has deposed that one Mr. Mathew, who was working for the first respondent provided a jeep bearing registration No. KRO 6606 to him and his wife to go from their house to polling booth No. 70 to vote. According to him, the said Mathew requested him to vote for the first respondent, whom, the said Mathew told him, will become a Minister. Witness has further stated that leftists came and fought with the driver of the jeep saying that taxis should not be arranged for the election. In cross-examination he has given the names of persons who created problem with the jeep driver. According to the witness, along with him and his wife, two other persons, whose names were also given by the witness, were also in the jeep. Though it has come out in cross-examination that the witness stood as a booth agent for the LDF candidate in the Panchayat election, nothing is brought out to discredit his evidence. PW15 has deposed that one Vakkachan who is a worker for the first respondent arranged an autorickshaw bearing registration No. KL-5-4400 for him and his wife to go from their house, which is 8 KMs. away from the polling booth, to the polling booth No. 65 to vote. The witness has stated in cross-examination that LDF people by name CC Chacko and Pappachan came to block the autorickshaw. According to him other LDF people saw the witness alighting from the autorickshaw to vote. PW16 has stated that one person by name Pulikakunnel Vakkachan provided an autorickshaw to the witness to go for voting. He also requested the witness to vote for the first respondent. According to the witness, the person who provided the autorickshaw had gone to the house of the witness the previous day also with a request to vote. The witness further stated that one other person and his wife were also in the autorickshaw. Further, he stated that on the way Mr. Madhu, who was examined as PW3, also boarded the autorickshaw. The witness was taken to the election office of the first respondent near the polling booth where he was given slip. However, the witness does not state the registration number of the

autorickshaw, but he says that the autorickshaw is usually running in that area. PW17 has deposed that he was provided with a jeep by Pulikakunnel Vakkan @ Vakkachan to go from his house, which is 6 KMs. away from the polling booth, to the polling booth, to cast his vote. The witness has stated that from the request of the said Vakkachan to vote for the first respondent, he came to know about his party politics. Witness is stated to have been given slip from the election office of the first respondent. He has given the registration number of the jeep as KL-5-1845. One Valiyaveetil Sasidharan is stated to have protested against the witness going to the booth in the jeep for voting. However, since the witness was personally known to him, Mr. Sasidharan is said to have backed out from the protest. Two other persons who went along with the witness in the Jeep are his father's brother and sister. PW18 a driver by profession has given evidence that he was the driver of autorickshaw bearing registration No. KL-5-4400 used by party workers of the first respondent for transport of electors to and from polling booth. According to the witness, he was engaged for taking electors to the polling booth by Mr. Vakkachan Pulikakunnel. He has given the place from where he has taken Mr. Saji, PW15, and his wife to polling booth No. 65. The evidence of this witness corroborates the evidence of Mr. Saji who was examined as PW15. According to the witness he operated two more trips on the polling date at the request of said Vakkachan, who, it has come in evidence, is a party worker of the first respondent. The further evidence given by the witness is that the said Vakkachan paid him for the trips. He has also confirmed the version given by other witnesses that some people stopped the vehicle when persons were taken in it to the polling booth. In fact in the cross-examination he has named the persons who have obstructed the vehicle when used to take electors to the polling booth as CC Chacko, who is the Secretary of the local CPM committee, one Pappachan, etc. 17. The question to be considered is whether the evidence of witnesses discussed above would prove the allegation of corrupt practice under Section 123(5) of the Act. The evidence of witnesses has to be considered with reference to the ingredients of the offence which is elaborated by the Supreme Court in DHARTHIPAKAR V. RAJIV GANDHI, A. I. R. 1987 S.C. 1577 as follows :

- (1) Hiring or procuring of vehicle by a candidate or his agent or any other person with his consent.
- (2) The hiring and procuring of vehicle must be for conveyance of the voters to and from polling station, and
- (3) The conveyance provided to electors should be free of charges.

The facts that stand proved through the evidence of independent witnesses whose evidence is discussed above are that autorickshaws bearing Registration No.

KL-5-4400 and KL-5C-3431 and Jeeps bearing registration No. KRO 6606 and KL-5-1845 were provided by party workers of the first respondent to transport electors from their houses to the polling booth and back to their houses. Each witness has given the booth number, registration of the vehicle, the person who arranged the vehicle, etc. precisely. The evidence of none of the witnesses stands discredited by anything brought out in cross examination or through any other evidence. PW25 is an Advocate and a local leader of petitioner's party, and his evidence pertains to the electors and the vehicles provided to them by party workers of the first respondent for going to polling booth. Even though he is an interested witness, and his evidence cannot be relied on independently, it cannot be ignored because it goes along with and corroborates the evidence given by independent witnesses discussed above. He specifically named the party workers of the first respondent who arranged vehicle for transport of voters to polling booths. Even though counsel for the first respondent contended that no documentary evidence was produced to establish that PW3, and PW13 to PW17 are in the rolls of the electors, I do not think any documentary evidence is required to prove the same because witnesses when examined in Court have stated even the number of polling booth they went to vote in the vehicle provided by the party workers of the first respondent. If the first respondent has any case that they have not figured in the voters' list published for the said polling booths, it is for the first respondent to produce the voters' list to establish his case that the witnesses have no vote in the said booths as claimed by them. Therefore I do not find any basis for this contention. Since hiring and procuring of four vehicles stated above by the party workers of the first respondent for transport of electors to and from the polling booth stand established beyond any reasonable doubt, the two other ingredients to be proved for the purpose of establishing electoral offence under Section 123(5) of the Act are that hiring and procuring of vehicles by party workers of the first respondent are with the consent of the first respondent or his election agent and that facility was given to the electors free of charges. No direct evidence is produced to prove the consent given by the first respondent or his election agent to his party workers who arranged the vehicles. The Supreme Court has, in *BALWAN SINGH V. PRAKASH CHAND*, (1976) 2 SCC 440, held as follows:

It is not always possible for an election petitioner to adduce direct evidence to prove that a particular vehicle was hired or procured by the candidate or his agent or by any other person with the consent of the candidate or his election agent, but this can be inferred from the proved circumstances where such inference is justifiable.

The question therefore is whether in the absence of direct evidence of consent given by the first respondent

or his election agent to his party workers, such consent can be inferred from the conduct of the parties in arranging vehicles for the first respondent. It is important to note that the first respondent has no case that those persons, who arranged vehicles for the witnesses, were not his party workers. In fact not even suggestive questions were asked on behalf of the first respondent to any of the witnesses that the party worker of the first respondent named by the witness is not really the party worker of the first respondent and that the first respondent has nothing to do with him. Even though first respondent was examined as RW1 and his election agent as RW11, both of them have not denied that the persons named by witnesses who arranged vehicles to them to go to polling booth to vote, are not party workers of the first respondent. In the circumstances the case proved by the election petitioner through the witnesses is that persons who arranged vehicles, particulars of which are given above, were the party workers of the first respondent. At least one witness examined, namely, PW18 has stated that for hiring his vehicle he was paid charges by a party worker of the first respondent. Election funds normally are used for purposes authorised by the candidate and invariably funds flow from the candidate for use in specific election purposes. It is also to be noted that Supreme Court in *HARCHARAN SINGH V. SAJJAN SINGH A.I.R. 1985 S.C. 236*, held that while insisting on standard of strict proof, the court should not extend or stretch this doctrine to such an extreme extent as to make it well-nigh impossible to prove an allegation of corrupt practice. Such an approach would defeat and frustrate the very laudable and sacrosanct object of the Act in maintaining purity of the electoral process. Keeping this principle in view, from the facts proved and attendant circumstances, and the natural presumption that party workers engaged in election work go by the instruction of the candidate and his election agent, I am of the view that the only inference possible is that the party workers, including unit level leaders, named by the witnesses arranged vehicles with the consent of the first respondent. The ground for this inference is further strengthened by my earlier finding that the party workers with the consent and knowledge of the first respondent and his election agent have distributed Ext.P1 notice and Ext.P2 calendar among electors. Therefore their hiring vehicles to electors to go to the polling booth also to further the election prospects of the first respondent in the circumstances should have been done with the consent of the candidate.

18. The last ingredient to be proved is whether the vehicles were provided to the electors free of charges. Of course, witnesses have not specifically stated that the vehicles provided to them were free of charges. So far as the vehicle provided to PW15 is concerned, it was driven by PW18, who when examined stated that vehicle charges were paid to him by Mr. Vakkachan a party worker of the

first respondent, which obviously means that it was not paid by electors who were transported to the polling booth. The statements of all the witnesses are that party workers of the first respondent volunteered to provide vehicles and though they were reluctant to vote on account of distance to polling booths from their houses, they were persuaded to go to the polling booth to vote because the party workers of the first respondent provided vehicles to them. The evidence given by the witnesses clearly prove that none of the witnesses hired the vehicle for his purpose, but, on the other hand vehicle service was offered to each of them by first respondent's party workers. In these circumstances, the only possible inference is that witnesses were provided vehicles free of charges and it is absurd to assume that the party workers of the first respondent who provided vehicles to the electors to go to polling booth to vote, collected charges for the same from such electors. In view of the above findings, I hold that first respondent has committed corrupt practice under Section 123(5) of the Act by providing autorickshaws bearing registration No. KL-5-4400 and KL-5C-3431 and Jeeps bearing registration No. KRO 6606 and KL-5-1845 free of charges to the electors to go to the polling booths to vote for the first respondent

19. The next question to be considered is petitioner's prayer under Section 84 of the Act for declaring him elected in terms of Section 101 (b) of the Act. On behalf of the first respondent, the LDF Convenor was examined as RW7. The purpose was to establish that the defeat of the election petitioner was for want of proper election work by the constituents of the Left Democratic Front. Questions were asked to the said witness about the report prepared by Mr. Panniyar Ravindran after conducting enquiry about the causes of defeat of the election petitioner. Besides this, questions were also asked about the newspaper reports pertaining to reasons for election defeat of the election petitioner. In fact, Ext.R1 (d) and R1 (g) series of newspaper reports are also produced pertaining to appointment of Commission, Inquiry and Opinions about the defeat of the election petitioner. Evidence of RW7 does not advance the case of the first respondent that petitioner lost the election for want of election work by his party workers. Secondly Exts. R1(d) and R1(g) series of newspaper reports without any independent evidence are inadmissible as evidence. In any case the other reasons for defeat of election petitioner are not relevant while considering his prayer under Section 84 of the Act. The prayer under Section 84 of the Act by the petitioner is not only opposed by first respondent but by respondents 2, 4, 5 and 10 also. In order to grant the relief, in the first place, there should be a prayer in this regard which is very much there in this case and the specific issue on petitioner's entitlement for being declared elected was framed prior to trial. It is clear from the Section that after holding the election of the returned candidate void the

court can declare the petitioner or any other candidate elected only if it is of opinion:

"that but for the votes obtained by the returned candidate by corrupt practices, petitioner or such other candidate would have obtained majority of the polled votes."

20. The statute therefore expects the court to estimate the number of votes that would have been obtained by the claimant but for the proved corrupt practices of the elected candidate. Since the prayer in the Election Petition is to declare only the petitioner elected, the relevant aspects to be considered are the relative number of votes obtained by the first respondent, petitioner and other candidates and the possible number of votes which the petitioner or other candidates would have got, but for the corrupt practices practised by the first respondent. In other words, while considering petitioner's case, the Court should consider chances of any other candidate other than the petitioner succeeding irrespective of whether relief to such candidate can be granted or not. In this case, the first respondent won the election over the petitioner with a majority of 529 votes. The third largest votes were polled in favour of the second respondent, over whom the petitioner and first respondent have got over 55,000 votes. Therefore petitioner will be entitled to the relief if this Court is satisfied that from out of the votes polled in favour of the first respondent, petitioner would have got at least 265 votes more, but for the corrupt practices engaged by the first respondent. As already held, corrupt practice is committed by the first respondent both under Section 123(3) and Section 123(5) of the Act. So far as the corrupt practice under Section 123(3) of the Act is concerned, it has come in evidence that 50,000 copies each of Exts. P1 and P2 were printed and circulated among the catholic voters. In fact entire printed copies of Exts.P1 and P2 were taken delivery from the Press by the evening of 25-4-2004. Even though evidence adduced does not prove circulation of all the printed copies, in view of availability of two weeks' time up to the date of election, and in view of the proved earnestness of the party workers of the first respondent in distribution of copies of Exts.P1 and P2 in the houses of catholic voters, obviously all the printed copies or at least substantial portion of it, would have been circulated. It is in evidence and normally at least an average of two votes are there from every house and independent witnesses examined in court have given evidence that communal considerations incited through Exts. P1 and P2 prompted them to vote for the first respondent. This only means that but for the influence of Exts.P1 and P2 they would have gone by political considerations and in which case petitioner could have been the beneficiary. If the whole of the printed copies of Exts.P1 and P2 were circulated, the exposure of the same would have been to minimum one

lakh voters, keeping in mind a minimum of two voters from every house. It is pertinent to note that independent witnesses who have given evidence on Exts. P1 and P2 in favour of the petitioner were catholics which only shows that though they cast their vote in favour of the first respondent under the temporary influence of Exts. P1 and P2, they are not ardent political supporters of the first respondent and were loyal to the petitioner. Therefore the possible inference is that, but for the influence of Exts. P1 and P2, the catholic witnesses examined in court and very many people with same view would have cast their vote in favour of the petitioner as against their voting in favour of the first respondent under the influence of Exts. P1 and P2. Even assuming that but for corrupt practice some votes secured by the first respondent would have gone in favour of the second respondent, who is a catholic candidate contested in the election in the party ticket of Kerala Congress (M), still the election result would not have gone in favour of him because the votes required for him to win in the election were above 55,000 over the petitioner and the first respondent. If the second respondent has any case that he would have got votes of such number in his favour, but for the corrupt practice of the first respondent, he would have filed election petition and prayed for same relief which he has not done. However, assuming the worst for the petitioner that he would not have got any of the votes canvassed by the first respondent through the corrupt practice engaged by him and the votes but for the corrupt practice would have gone in favour of the second respondent and other candidates, then a reduction of just 530 votes for the first respondent would have resulted in victory for the petitioner. Even though votes secured by first respondent through corrupt practice under Section 123(5), i.e., by providing vehicles to electors are not high, it assumes significance because of the low margin in votes between petitioner and himself. In the circumstances, and in view of the findings above, I am of opinion that but for the corrupt practices proved to have been practised by the first respondent, petitioner would have got at least 265 more of the votes polled in favour of the first respondent in which case he would have won the election. Therefore I hold that petitioner is entitled to be declared elected under Section 100(1)(b) of the Act.

21. In the result, the election petition is allowed as follows :

(a) In exercise of powers conferred under Section 98(c) of the Act, I declare the election of the first respondent, the returned candidate, to the House of People from No.12 HP Muvattupuzha Parliamentary Constituency in the election held on 10-5-2004 to be void and I further declare the petitioner elected in the place of the first respondent from the same constituency.

(b) The findings on commission of corrupt practice by the first respondent under Section 123(3) and

123(5) of the Act will hold good for the purpose of Section 99 of the Act also.

(c) For the purpose of Section 99(1)(b) I direct the parties to bear their respective costs.

As required under Section 103 of the Act, the Registry will forward one copy each of the judgment in the Election Petition to the Election Commission and also to the Speaker, through Secretary General, Lok Sabha Secretariat, New Delhi.

Sd/-

C. N. RAMACHANARAN NAIR,
Asst. Registrar

APPENDIX

Petitioner's Exhibits :

Annexure I & Annexure I (A)=Ext. P1 : Notice dated 21-4-2004 as a statement of John Kachiramattom printed and published and circulated by the first respondent his Election Agent and other Agents & English Translation of Annexure I.

Annexure II=Ext. P2: Photo Calendar Printed, Published and Circulated by the First Respondent his Election and other agents.

Annexure IIA : News item published in Malayala Manorama Daily Dated 26-4-2004.

Annexure IIB : English Translation of Annexure IIA.

Annexure IIC : Statement of Accounts of the District Collector Regarding the Security of Nomination Papers.

Annexure III : True copy of the report of the district collector regarding the security of nomination papers.

Annexure IV : True copy of the relevant entry in the nomination form issued to the Petitioner from the district Collectorate.

Annexure V : True copy of the certificate dated 21-6-2005 issued by the District Collector Regarding R1(b).

Annexure VI : True copy of list of vehicles for which vehicle pass were issued by the Returning Officer.

Annexure VII : True copy of the certificate by the District Collector that no vehicle pass was issued in favour of the first respondent before 27-4-2004.

First respondents exhibits :

Ext. R1(a) photocopy of the autoprnt machine.

Ext. R1(b) true copy of tour programme of the first respondent.

Ext. R1(c) true copy of news paper reports.

Ext. R1(d) true copy of newspaper reports.

Ext. R1(e) photocopy of the declaration given by the managing partner of the Akshara printers, before the Addl. District Magistrate, IDUKKI.

Ext. R1(f) Photocopy of the Orders of the Thodupuzha Municipal Secretary.

Ext. R1(g) Series: photocopy of Malayala Manorama daily report Dated 3-6-2004.

P. S. To Judge

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Present :

The honourable Mr. Justice C. N. Ramachandram Nair
Tuesday, the 31st day of October 2006/9th Karthika,
1928

I. A. No. 11/2006 in Ele. Ptn. No. 1/2004

Petitioner/1st Respondent in E. P.

Adv. P.C. Thomas, Pullolil House, No. 18,
Kumaranasan Nagar, Kadavanthra, Ernakulam.

Respondents/Petitioner & Respondents 2 to 15 :

1. Adv. P. M. Ismail, S/o. Mohammed, Panakkal House, Mundavoor, P.O. Muvattupuzha.
2. Jose K. Mani, Karingozhakkal, H. No. 18/31, Pala P. O.
3. P. Appukuttan, Ranjini, Kizhakkekkara, Muvattupuzha.
4. Ismail, Thekkemangalam, Erattupetta P. O. Meenachil.
5. A. M. Ismail, Safia Manzil, 38/539, Stadium Ward, Alappuzha.
6. P. M. Ismail, Palasseri Kooliparambil, 8/250, A. R. Nagar, Thiroorangadi, Kuttoor North Post.
7. Johnny Mani, Pullittel, Rakkad, Mekkadambru P. O.
8. Jose Joseph, Anekkallumkal, Kurumannu P. O., Pala.
9. P. C. Thomas, (Pazhiyankal Pazhiyankal, H. No. 209, Chirakidavu PO, Kanjirappally.
10. Adv. P. C. Thomas (Peediakkal) Peediakkal House, Thiruvalla.

11. Mahin Badusna Moulavy, Kelamkudiyil , Senkulam PO, Muthuvankudy, Idukki.

12. K. M. Mani, Kattackal Veedu, Vazhakkulam, Muvattupuzha.

13. K. T. Mathew, Kumaramtharayil, Pala.

14. K. N. Rajasekharan Nair, 8/550 Sreerangam, Chottanikkara.

15. P. P. Santhosh, Puthenpura Thundiyl, Maradu PO, Ernakulam.

Petition praying that in the circumstances stated therewith the High Court be pleased to stay the operation of Judgment in the above election petition till the end of prescribed appeal time in order to enable the petitioner herein to file appeal before the Honourable Supreme Court of India.

This petition coming on for orders upon perusing the petition and upon hearing the arguments of Mr. K. Ramakumar, Advocate for the Petitioner, and Advocate G. Janardana Kurup, for R1, Advocate Mr. Sunil Cyriac for R2, Advocate Mr. A. J. Jose for R5, Advocate Mr. Bobby John for R10, the Court passed the following :

C. N. RAMACHANDRAN NAIR, J.

I. A. No. 11 of 2006

in E. P. No. 1 of 2004

Dated this the 31st day of October, 2006

ORDER

Heard counsel for the petitioner and counsel for the respondents. Since the first respondent in E.P. desires to file appeal before the Supreme Court, the operation of the judgment in the EP is stayed for a period of 30 days from today.

Registry will forward a copy of this order, along with a copy of judgment in the Election Petition, to the Election Commission and also to the Speaker, through Secretary-General, Lok Sabha Secretariat, New Delhi.

Hand over copy of this order to counsel for the petitioner and respondents tomorrow itself.

Sd/-

C. N. RAMACHANDRAN NAIR, Judge

[No. 82/KL-HP/(1/2004)/2006]

By Order,

TAPAS KUMAR, Secy.

आदेश

नई दिल्ली, 7 फरवरी, 2007

आ. अ. 6.—जबकि निर्वाचन आयोग का समाधान हो गया है कि नीचे की सारणी के स्तम्भ (2) में यथा विनिर्दिष्ट फरवरी 2005 में हरियाणा विधान सभा के साधारण निर्वाचन के लिए जो स्तम्भ (3) में तदनुरूपी विनिर्दिष्ट निर्वाचन-क्षेत्र से हुआ है, के स्तम्भ (4) में उसके सामने विनिर्दिष्ट निर्वाचन लड़ने वाला प्रत्येक अभ्यर्थी, लोक प्रतिनिधित्व अधिनियम, 1951 तथा तद्दीन बनाए गए नियमों द्वारा अपेक्षित उक्त सारणी के स्तम्भ (5) में यथा दर्शित अपने निर्वाचन व्ययों का लेखा दाखिल करने में असफल रहा है;

और जबकि उक्त अभ्यर्थियों ने सम्यक् सूचना दिए जाने पर भी उक्त असफलता के लिए कोई कारण अथवा स्पष्टीकरण नहीं दिया है तथा निर्वाचन आयोग का यह समाधान हो गया है कि उनके पास उक्त असफलता के लिए कोई पर्याप्त कारण या न्यायौचित्य नहीं है;

अतः अब, निर्वाचन आयोग उक्त अधिनियम की धारा 10-क के अनुसरण में नीचे की सारणी के स्तम्भ (4) में विनिर्दिष्ट व्यक्तियों को संसद के किसी भी सदन के या किसी राज्य/संघ राज्य क्षेत्र की विधान सभा अथवा विधान परिषद् के सदस्य चुने जाने और होने के लिए इस आदेश की तारीख से तीन वर्ष की कालावधि के लिए एतद्द्वारा निरर्हित घोषित करता है:

सारणी

क्र.सं. निर्वाचन का विवरण	निर्वाचन-क्षेत्र की क्र.सं. और नाम	निर्वाचन लड़ने वाला अभ्यर्थी का नाम और पता	निरर्हता कारण
1	2	3	5
1. हरियाणा विधान सभा 2005 के लिए साधारण निर्वाचन	65-मुन्डाल खुर्द विधान सभा निर्वाचन क्षेत्र	श्री कर्मबीर रंगा, गांव व पोस्ट मण्डाणा तहसील व जिला-भिवानी, हरियाणा।	निर्वाचन व्ययों का कोई भी लेखा दाखिल करने में असफल रहें।
2. यथा	यथा	श्री मनबीर, गांव व पोस्ट रिवाडीखेड़ा, तहसील व जिला-भिवानी, हरियाणा।	यथा
3. यथा	70-बरवाला विधान सभा निर्वाचन क्षेत्र	श्री प्रेम सिंह, गांव व डाकखाना-प्रभुवाला, तहसील व जिला-हिसार, हरियाणा।	यथा
4. यथा	88-महेन्द्रगढ़ विधान सभा निर्वाचन क्षेत्र	श्री बिरजू सिंह, पुत्र श्री सुरजभान, गांव व डाक-पाली, तह. व जिला-महेन्द्रगढ़, हरियाणा।	यथा
5. यथा	यथा	श्री शैतान सिंह, पुत्र श्री गोकल राम, गांव व डाकखाना-बसई, तह. व जिला-महेन्द्रगढ़, हरियाणा।	यथा
6. यथा	यथा	श्री सत्यपाल पुत्र श्री राम कुमार, गांव व डाक-लावन, तह. व जिला-महेन्द्रगढ़, हरियाणा।	यथा

1	2	3	4	5
7.	हरियाण विधान सभा 2005 के लिए साधारण निर्वाचन	89-अटेली विधान सभा निर्वाचन क्षेत्र	श्री नरेन्द्र, गांव- कुतबपुर, डा. बड़कोदा, तहसील-नारनौल जिला- महेन्द्रगढ़, हरियाणा।	निर्वाचन व्ययों का कोई भी लेखा दाखिल करने में असफल रहें।
8.	यथा	यथा	श्री नरेश कुमार, गांव व डाक.- सिंहमा, हरियाणा।	यथा
9.	यथा	यथा	श्री मुन्नी राम, गांव व डा. राताकलां तह. नारनौल, जिला-महेन्द्रगढ़, हरियाणा।	यथा
10.	यथा	यथा	श्री सभा राम, गांव -हुडीना, तहसील - नारनौल, जिला - महेन्द्रगढ़ हरियाणा।	यथा
11.	यथा	यथा	श्री हरबंश लाल, गांव व डा. भूषण कलां हरियाणा।	यथा
12.	यथा	90-नारनौल विधान सभा निर्वाचन क्षेत्र	श्री दिवान सिंह, गांव-मोहम्मदपुर हमीदखां डाकखाना-डोहर कलां, तहसील-नारनौल, जिला-महेन्द्रगढ़, हरियाणा।	यथा

[सं. 76/हरियाणा-वि.स./2005(9)]

आदेश से,

के. अजय कुमार, सचिव

ORDER

New Delhi, the 7th February, 2007

O. N. 6.—Whereas, the Election Commission of India is satisfied that the contesting candidates specified in column (4) of the table below at the General Election to the Legislative Assembly held from Haryana in February, 2005 as specified in column (2) and held from constituencies correspondingly specified in column (3) against their names have failed to lodge account of their election expenses, as shown in column (5) of the table, as required by the Representation of the People Act, 1951, and to Rules made thereunder.

And whereas, the said candidates have either not furnished any reason or explanation for the said failure even after due notice of the Election Commission, after considering the representation made by them, if any, the Election Commission is satisfied that they have no good reason or justification for the said failure;

Now, therefore, in pursuance of Section 10A of the said Act, the Election Commission hereby declares the persons specified in column (4) of the table below to be disqualified for being chosen as, and for being, a member of either House of the Parliament or of the Legislative Assembly or Legislative Council of a State/Union Territory for a period of three years from the date of this order.

TABLE

Sl. No.	Particulars of Election	No. and Name of Assembly Constituency	Name and address of contesting candidate	Reason for disqualification
1	2	3	4	5
1.	General Election to the Legislative Assembly of Haryana -2005	65-Mundhal Khurd	Karambir Ranga, Village & P.O. Mandhana Teh. & Distt. Bhiwani, HARYANA	Failure to lodge account of election expenses.
2.	-do-	-do-	Manbir, V.P.O. Rewari Khera, Tehsil & Distt. Bhiwani, HARYANA	-do-
3.	-do-	70-Barwala	Prem Singh, VPO.- Parbhu Wala, Hisar, HARYANA	-do-
4.	-do-	88-Mahendragarh	Birju Singh, S/o Shri Surajbhan, Vill. & P. O. Pali, Teh. & Distt. Mahendergarh, HARYANA	-do-
5.	-do-	-do-	Saitan Singh, S/o Shri Gokal Ram, V.& P.O. Bassai, Teh. & Distt. Mahendragarh, HARYANA	-do-
6.	-do-	-do-	Satyapal, S/o Shri Ram Kumar, Vill. & P.O. Lawan, Teh. & Distt. Mahendragarh, HARYANA	-do-
7.	-do-	-do-	Narender, Village- Kutbapur, P.O. Barkoda, Teh. Narnaul, Distt. Mahendragarh, HARYANA	-do-
8.	-do-	-do-	Naresh Kumar, Village & P.O. Sihma, HARYANA	-do-
9.	-do-	-do-	Munni Ram, Village & P.O. - Ratta Kalan, Teh. - Narnaul, Distt. Mahendergarh, HARYANA	-do-

1	2	3	4	5
10.	General Election to the Legislative Assembly of Haryana -2005	89-Ateli	Sabha Ram, Village-Hudina, Tehsil-Narnaul, Distt. Mahendergarh, HARYANA.	Failure to lodge account of Election Expenses
11.	-do-	-do-	Harbans Lal, Village & P.O.- Bhushan Kalan, HARYANA.	-do-
12.	-do-	90-Narnaul	Diwan Singh, Vill. Mohmadpur, Hamidkhan, P.O. Dohar Kalan, The. Narnaul, Distt. Mahendergarh, HARYANA.	-do-

[No. 76/HN-LA/2005(9)]

By Order,

K. AJAYA KUMAR, Secy.